

DEPARTMENT OF THE INTERIOR

FRANKLIN K. LANE, SECRETARY

BUREAU OF MINES

VAN. H. MANNING, DIRECTOR

ABSTRACTS OF CURRENT DECISIONS

ON

MINES AND MINING

REPORTED FROM
SEPTEMBER TO DECEMBER, 1918

BY

J. W. THOMPSON

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23
44
no. 179
ENGINEERING

ENGINE STORAGE



WASHINGTON
GOVERNMENT PRINTING OFFICE

1919

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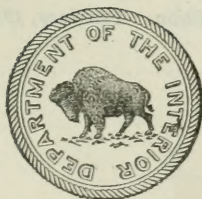
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The general law under which publications are distributed prohibits the giving of more than one copy of a publication to one person. The price of this publication is 20 cents.

ii

First edition. February, 1913.

PREFACE.

This bulletin, one of a series published by the Bureau of Mines, contains abstracts of all mining cases of all the highest courts reported in 1918, from September to December, inclusive. The references are to the full reported cases as decided by all the courts relating to various phases of mining enterprise.

In issuing these bulletins the bureau aims to present abstracts of decisions and references within a reasonable time after the cases have been decided. It is the hope of the bureau that the bulletins will be of value to mine owners, operators, and miners. A limited edition of each bulletin is printed for free distribution. When this edition is exhausted, copies may be purchased from the Superintendent of Documents, Washington, D. C.

VAN. H. MANNING,
Director.

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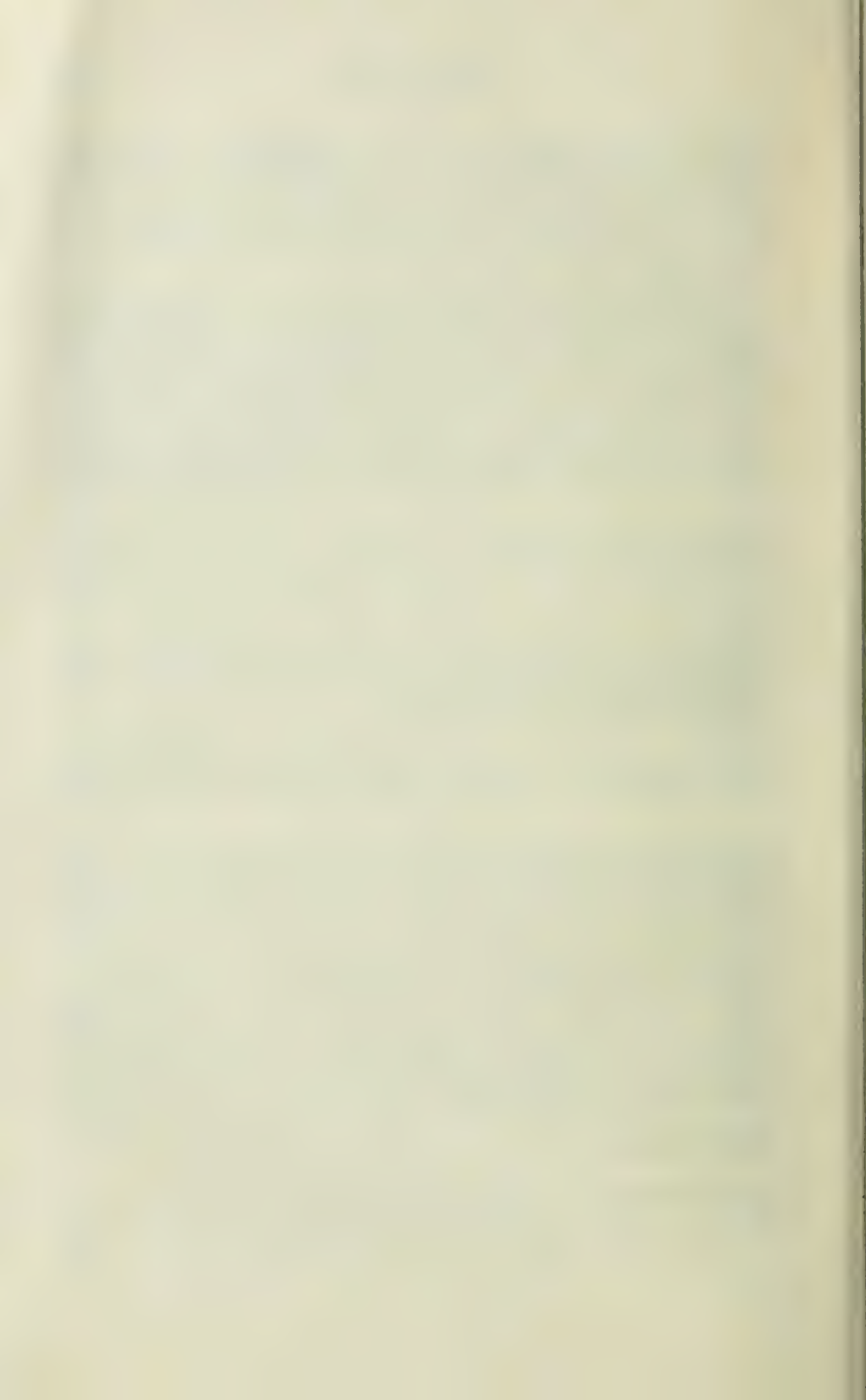
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ABSTRACTS OF CURRENT DECISIONS ON MINES AND MINING, SEPTEMBER-DECEMBER, 1918.

By J. W. THOMPSON.

MINERALS AND MINERAL LANDS.

MINERALS.

MINERALS IN SITU—INTEREST IN LAND.

The title to minerals in situ constitutes an interest in land.

Colby, In re, — Iowa —, 169 Northwestern 443, p. 444.

ESTATE IN MINERALS.

Minerals beneath the surface may be made the subject of separate ownership either by a grant of the minerals by the owner of the land or by a grant of the land excepting the minerals, and thereby an estate in fee simple is created in the minerals, as corporeal things real.

Colby, In re, — Iowa —, 169 Northwestern 443, p. 444.

DEEDS EXCHANGING DIFFERENT MINERALS—RIGHTS OF PARTIES.

The lands of two adjoining owners were underlaid with cement rock and clay at a depth of about 100 feet from the surface and with coal veins some 600 feet below the surface. By an exchange of deeds one of the land owners conveyed to the other the cement rock and clay with the right to mine and remove the same without entering upon the surface, but the deed contained no covenant not to injure the surface. The other deed conveyed the coal seam and so much of the rock and other minerals just above and below the coal as might be required in connection with the mining and removing of the coal, together with the right to mine and remove the same, and the adjacent rock, clay, and other minerals, without entering upon or injuring the surface, with one immaterial exception. The deeds do not define the word "surface" and neither expressly nor by implication did they secure to the coal owner the right to subside the overlying cement rock; but the implication is to the contrary, as the deed gives the right to mine and remove coal without entering upon or injuring the surface. The provision that the coal owner should not enter

upon or injure the surface amounts to a clause that the coal mine shall not be worked so as to let down the surface and this does not create any inconsistency with the provision giving the right to mine and carry away the coal.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 110.

TITLE TO SEVERED MINERALS.

The owner of the coal underlying the surface, where there has been a severance of the surface and the minerals, does not lose his right or his possession by any length of nonusage; but to lose such right he must be disseised and there can be no disseisin by any act which does not actually take the coal out of his possession.

Vance v. Clark, 252 Federal 495, p. 498.

POSSESSION OF SEVERED MINERALS—PROOF TO SUSTAIN TITLE.

Where there has been a severance of the surface and the minerals it is incumbent upon a person in possession, who seeks to acquire title to the minerals by possession, to show such possession of minerals as is required to gain title to the surface by occupancy for a statutory period.

Vance v. Clark, 252 Federal 495, p. 498.

CONVEYANCE OF SEPARATE STRATA—RIGHT OF OWNER OF HIGHER STRATUM.

One land owner conveyed to an adjoining owner a ledge of cement rock and clay lying about 100 feet below the surface. The grantee in this conveyance conveyed to the grantor the seam of coal in his land lying some 500 feet below the cement rock conveyed by the first deed. In the absence of provisions and conditions in the deed to the contrary the owner of the higher stratum is entitled to the same rights as an actual surface owner and the right of support is vital to the owner of the overlying strata.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 110.

OIL AND GAS AS MINERALS—OWNERSHIP.

Oil and gas are minerals and so long as they are in place they belong to the owner of the land under which they lie and he has the right to explore for them and extract them. However, if they escape from his premises to the premises of another before he has captured them, they are no longer his property; but on the other hand if by exploration on his premises oil escapes therefrom to the premises of an adjoining owner it becomes his property.

Pittsburgh & West Virginia Gas Co. v. Ankron, — W. Va. —, 97 Southeastern 593, p. 594.

See Warren v. Boggs, — W. Va. —, 97 Southeastern 589, p. 592.

TRANSPORTATION OF MINERALS—INVALID FREIGHT RATE.

The Legislature of North Dakota by statute fixed a freight rate for the transportation of coal. This rate was held valid by the supreme court of that State, but on appeal the United States Supreme Court finally held the rate to be confiscatory. In the meantime a railroad company, as a common carrier, had hauled and transported for a coal company a large amount of coal at the specified statutory rate. It does not follow from the fact that the statutory rate was confiscatory that the shipper is obliged as a matter of law to make reparation to the carrier.

Minneapolis, etc., *R. Co. v. Washburn Lignite Coal Co.*, — N. Dak. —, 168 Northwestern 684, p. 686.

MINERAL LANDS—SALE AND CONVEYANCE.**ACCEPTANCE OF DEED BY GRANTEE—ESTOPPEL.**

The grantees in a deed conveying mineral lands, or conveying lands reserving the mineral rights, who accepted the deed and held the land under it, are estopped from alleging its invalidity on the ground that the attorney in fact who executed it exceeded his authority.

Midkiff v. Colton, 252 Federal 420, p. 423.

DEED RESERVING MINERALS—PRESUMPTION AS TO ACCEPTANCE.

Prior to the execution of a deed conveying the surface of certain lands to the grantees named and reserving the mineral rights to the grantor, the grantees had been adjudged to have no interest whatever in the land. The fact that the deed conferred certain benefits upon the grantees and was subsequently found in the possession of one of them raises a strong presumption of the acceptance of the deed. This presumption may be reinforced by parol proof of statements of the grantees as to their interest acquired by the deed and that subsequent conveyances were made by them.

Midkiff v. Colton, 252 Federal 420, p. 423.

DEED RESERVING MINERALS—ACCEPTANCE—ESTOPPEL.

A grantee having no title to certain lands but who had received a deed of conveyance from the true owner at the time it was made, and had carefully preserved the deed and produced it from his possession, can not be allowed to defeat the conveyance by testifying that he never accepted the deed and that he has been holding adversely to it.

Midkiff v. Colton, 252 Federal 420, p. 423.

CONVEYANCE BY FORGED DEED—UTTERANCE.

The fact that a grantee named in a deed purporting to convey land to himself, and that he knew it to be forged, and upon the faith of its authenticity sold and conveyed to a third person the minerals and coal in the land, is sufficient evidence of the utterance of the forged deed.

Daniels v. Commonwealth, — Ky. —, 205 Southwestern 402, p. 403.

CONTRACT OF SALE—OPTION.

By the terms of a contract the owners of mineral lands covenanted, promised, and agreed to grant, bargain, and sell the described land in consideration of certain sums to be paid upon the dates specified. The contract itself recited that if the option was not taken up, then all the machinery and fixtures should remain and become a part of the premises. The contract is clearly an option contract and not a sale, and the holder is not a vendee, but merely the holder of an option.

Smith v. Beebe, — Idaho —, 174 Pacific 608, p. 610.

See Harper v. Independence Dev. Co., 13 Ariz. 176, 108 Pacific 701.

CONTRACT OF SALE—TIME AS OF THE ESSENCE.

In all agreements looking to the sale of mining property, time is of the essence. The rule is especially applicable to mining property because of its liability to sustain fluctuations in value.

Smith v. Beebe, — Idaho —, 174 Pacific 608, p. 610.

GUARANTY OF TITLE.

By the terms of a contract a certain milling company was to organize a new corporation and two mining companies agreed to convey to the new corporation, by a good and sufficient deed, "a satisfactory merchantable title free and clear from any and all liens, incumbrances and taxes of every name or nature whatsoever," to certain mines and mining property. A contract of guaranty was executed to secure the performance of the general contract and to save the obligors "in the event said titles are not found merchantable and good." The contract of guaranty, with reference to the title of the mining properties, was narrower or different from the contract of the mining companies, but a guaranty may be narrower than the principal contract to be secured, and its guaranty can not be enlarged beyond the strict intent of the instrument. The contract did not guarantee that the title or titles would be satisfactory, and if the conveyance passed a merchantable title to the property referred to, the terms of the contract and of the guaranty were satisfied.

Sutton, Steele, etc., Min. Co. v. McCulloch, — Colo. —, 174 Pacific 303.

SURFACE AND MINERALS—OWNERSHIP AND SEVERANCE.**SEPARATION OF MINERALS AND SURFACE—PRESUMPTION.**

The presumption that the owner of land having the possession of the surface has the possession of the subsoil or minerals underlying does not exist when there has been a severance of the surface and the minerals.

Vance v. Clark, 252 Federal 495, p. 498.

MEANING OF "SURFACE"—APPLICATION TO MINERAL STRATA.

The word "surface" in mining controversies means that part of the earth or geologic section lying over the minerals in question, unless otherwise defined by the deed or conveyance. It is not merely the top of the glacial drift, soil, or the agricultural surface. The owner of a higher stratum is entitled to the same rights as the actual surface owner.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 111

POSSESSION OF SURFACE—EFFECT ON MINERAL RIGHTS.

Where the estates in the surface of land and the underlying minerals have been severed, the possession of the surface and improvement thereof are not inconsistent either with the title to the coal outstanding in another, or with the right of mining the same. Such possession does not extinguish the outstanding title to the mineral.

Preston County Coke Co. v. Elkins Coal & Coke Co., — W. Va. —, 96 South-eastern 973, p. 975.

POSSESSION OF SURFACE—ADVERSE POSSESSION OF MINERALS.

A purchaser of land who took his conveyance with knowledge that the surface had been severed from the minerals by a deed of the surface reserving the minerals can not subsequently claim the minerals by adverse possession because of his ownership and possession of the surface of the land.

Midkiff v. Colton, 252 Federal 420, p. 424.

See Vance v. Clark, 252 Federal 495.

POSSESSION OF SURFACE—RIGHTS TO SEVERED MINERALS.

The owner of the surface of land, when the underlying coal has been separately conveyed, can acquire no title to the coal by his exclusive and continued possession of the surface.

Vance v. Clark, 252 Federal 495, p. 498.

USE OF SURFACE—KNOWLEDGE OF OWNERS.

It is a matter of common knowledge that the surface of land can be advantageously used for many purposes in subordination to the ex-

ercise of reasonable and ordinary mining rights, and the owners of the surface and of the mining rights are presumed to have knowledge of these facts. With such presumption of knowledge the owner of the mining rights in certain land does not waive or release or otherwise burden his mining rights by releasing to a purchaser a mere option or privilege held by him to purchase the surface. But a purchaser who acquires the surface with such knowledge and accepts a deed expressly excepting the mining rights is bound thereby.

Preston County Coke Co. v. Elkins Coal & Coke Co., — W. Va. —, 96 Southeastern 973, p. 974.

USE OF SURFACE—INJUNCTION.

The owner of land conveyed the underlying coal with the free and uninterrupted right of way under the land at such points and in such manner as might be necessary and proper for the purpose of digging, mining, draining, ventilating, and carrying away the coal, and expressly waived all damages arising therefrom or from the removal of the coal, together with the privilege of mining and removing through the premises described other coal belonging to the grantee or his assigns. In the operation of a mine in the coal seam conveyed, gas was generated, and by reason of a part of the coal having been mined out and falls having resulted, the gas accumulated and settled in and over the seam of coal in dangerous quantities and in such places and manner that it could not be removed by the ordinary means of ventilation. Under these circumstances and for the purpose of removing the gas and for the proper ventilation of the mine, the mine operator had the right to enter upon the surface of the land and drill a bore hole 10 inches in diameter for the purpose of releasing the accumulation of gas in its mine; and the surface owner can not by injunction prevent the mine operator from exercising this right.

Oberly v. H. C. Frick Coke Co., — Pa. —, 104 Atlantic 864, p. 865.

USE OF SURFACE—LIMITATION—GRANTEE NOT ESTOPPED TO COMPLAIN.

The owner of mineral lands conveyed the surface by deed, reciting that the party of the first part shall continue the owner of the minerals with the right to mine and extract the same: "Provided, that in the exercise of such mining rights, said premises shall not be disturbed, damaged, or interfered with by said party of the first part." The grantor thus voluntarily limited his right to such mining operations as would not disturb, damage, or interfere with the grantee in the use and occupation of the surface ground. Under such a reservation the grantee was not estopped from enjoining such mining operations that constituted a nuisance under the Montana statute.

Cavanaugh v. Corbin Copper Co., — Mont. —, 174 Pacific 184, p. 186.

RELEASE OF RIGHT TO PURCHASE SURFACE—EFFECT ON MINING RIGHTS.

The coal and mining rights in certain land were conveyed by deed with the right to take at any time as much of the surface of the tract of land as might be necessary for the operation of the coal or manufacturing coke, at a certain stated price. Later the coal grantee released to a subsequent purchaser of the surface the option to purchase the surface. The release of this privilege or option to purchase to one who purchased the surface subject to the mining rights and with knowledge of the intention of the owner of the mining rights to devote the surface to certain uses in connection with his mining right is not necessarily a preclusion of the exercise of the mining rights, especially where the conveyance to the surface owner expressly excepted the mining rights.

Preston County Coke Co. v. Elkins Coal & Coke Co., — W. Va. —, 96 Southeastern 973, p. 974.

CONVEYANCE OF MINERALS WITH PRIVILEGE OF REMOVAL—EFFECT.

A conveyance of the underlying coal with the privilege of its removal from under the land of the grantor, particularly described, effects a severance of the right to the surface and the right to such underlying coal and makes them distinct corporeal hereditaments.

Vance v. Clark, 252 Federal 495, p. 498.

CONVEYANCE OF MINERALS—RIGHT TO MINE.

When a landowner grants the underlying minerals, reserving the surface to himself, his grantee is entitled only to so much of the mineral as he can get without injury to the superincumbent soil.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 115.

See Wilms v. Jess, 94 Ill. 404, 34 Am. Dec. 242; Lloyd v. Catlin Coal Co., 210 Ill. 460, 71 N. E. 335; Coleman v. Chadwick, 8 Pa. St. 81, 21 Am. St. Rep. 93; Horner v. Watson, 79 Pa. St. 242, p. 251, 21 Am. St. Rep. 550; Jones v. Wagner, 66 Pa. St. 429, 5 Am. St. Rep. 385; Zinc Co. v. Franklinite Co., 13 N. J. Chancery 342; Harris v. Ryding, 5 Meeson & Wellsby 59; Smart v. Morton, 5 Ellis & Blackburn 30.

CONVEYANCE AND RESERVATION OF MINERALS—RIGHT TO MINE—CONSTRUCTION OF DEEDS.

The owners of mineral lands arranged to transfer one stratum of minerals to one and another stratum of minerals to the other by cross conveyances, each conveyance making the proper reservation and granting the right to mine and remove the minerals so conveyed. In a controversy arising on the right to mine and remove the coal conveyed to one and in the construction of the deeds, evidence of all

the surrounding circumstances was properly admitted to show the situation and relation of the parties and what they sought to materially accomplish by the deeds.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 111.

RIGHT TO MINE—IMPLIED INCIDENTS OF GRANT.

A grant of minerals with a reservation of the surface gives the right to enter and to mine and remove the minerals, unless the language of the grant itself provides otherwise or repels this construction. This right is so inseparable from a grant of minerals that not only is it necessarily an implied incident thereto, but it and its derived rights can not be restrained or excluded by a special affirmative power to do other acts, or by a grant of other privileges necessary or convenient to the working of mines. The right to work a mine involves the right to penetrate the surface of the soil for the minerals, to remove them in the manner most advantageous to the mine owner, and to use such means and processes in mining and removing the minerals as may be necessary in the light of modern mining improvements.

Oberly v. H. C. Frick Coke Co., — Pa. —, 104 Atlantic 864, p. 865.

MINING RIGHTS—TERM OF EXISTENCE.

As long as there is title to the underlying coal separate and distinct from the title to the surface, the right of mining and removing the coal must necessarily exist; and mining rights and privileges granted with the coal, being appurtenant thereto, must likewise exist in some form and to some extent as long as the title to the coal remains valid.

Preston County Coke Co. v. Elkins Coal & Coke Co., — W. Va. —, 96 South-eastern 973, p. 975.

CONVEYANCE OR RESERVATION OF MINERALS—EXPRESS AND IMPLIED RIGHTS—EASEMENT.

Usually on the severance of the surface and the underlying minerals the privileges that are impliedly incident to the right to mine are expressly granted or reserved in the instrument creating the mineral estate; but the character and extent of the implied rights are not altered if they are not in fact expressed. There may be expressed privileges added which would not otherwise be implied but if so these rights do not create an estate in the surface, but are easements to do certain acts thereon.

Oberly v. H. C. Frick Coke Co., — Pa. —, 104 Atlantic 864, p. 865.

SEPARATION OF MINERALS AND SURFACE—TIMBER FOR MINING PURPOSES—DUTY TO PROTECT.

A deed of mineral lands conferred upon the grantee the right to cut and use for mining purposes the timber on the surface. Under such

a deed the timber remains the property of the grantor until the grantee exercises his right to take and use it for mining purposes pursuant to the deed; but until so cut and appropriated, the grantee owes the duty to use due and reasonable care not to damage the timber. This duty is the same as that owing by him to protect the surface.

Godfrey v. Weyanoke Coal & Coke Co., — W. Va. —, 97 Southeastern 186, p. 190.
See Raleigh Coal & Coke Co. v. Mankin, — W. Va. —, 97 Southeastern 299.

COAL AND COAL LANDS.

GRANT OF RIGHT TO MINE—INJURY TO SURFACE—LIABILITY.

A grant by a landowner conveyed the underlying coal with the right to mine and remove the same without reservation, let or hindrance, and with all proper and reasonable rights and privileges for ventilating and draining and without being in any way liable for any damage or injury which may be done to the land or to any water or watercourse therein or thereon by reason of mining, excavating, and removing the coal. The intention of the parties to this conveyance was to preclude the possibility of an attempt to hold the grantee or his assigns responsible in damages for injuries to the land by reason of any act done in the exercise of the rights conferred by the grant. Under such a grant, an action for damages for injuries resulting from the subsidence of the surface, because the mine operator failed to leave sufficient coal or pillars to support the surface, can not be maintained.

Godfrey v. Weyanoke Coal & Coke Co., — W. Va. —, 97 Southeastern 186, p. 187.

RIGHT TO MINE—FAILURE TO EXERCISE RIGHT.

The failure of the owner of coal to exercise his rights for a long period of time after the execution of a release of an option or privilege to purchase the surface, and after the improvement of the surface, will not amount to a practical construction of the release as against such right, nor will it extinguish the right under the law of estoppel.

Preston County Coke Co. v. Elkins Coal & Coke Co., — W. Va. —, 96 Southeastern 973, p. 975.

GRANT OF MINING RIGHTS—USE OF WAYS AND OPENINGS.

The owner of lands granted the underlying coal with the free and uninterrupted right of way into, under, and over the described tract of land at such points and in such manner for such ways, tracks, and roads as might be necessary and proper for the purposes of ventilating, draining, and mining the coal. The grantee can not under such a grant consistently be limited to an underground approach to

any part of the coal, if there is reasonable necessity for a different way. In the mining operations the coal owner has a right to more than one opening and way and may find it to his advantage to operate two openings at the same time. Reasonable necessity for his purposes, the mining and marketing of the coal, is the true test, although the means adopted by him may be subject to reasonable limitation by the conditions he finds on the servient estate.

Preston County Coke Co. v. Elkins Coal & Coke Co., — W. Va. —, 96 South-eastern 973, p. 976.

DUTY OF OWNER TO KNOW BOUNDARIES—LIABILITY FOR MINING OVER LINE—DAMAGES.

Under a charge of trespass in mining coal the owner of adjoining coal lands is held to know the boundary between him and his adjoining owner. If he makes a mistake *prima facie* as to his title or boundaries in mining coal the least measure of damages applicable is the value of the coal immediately upon its conversion into a chattel without abatement of the cost of severance. But if the trespass has been committed through negligence or design then punitive damages in addition may be recovered.

Mt. Savage George's Creek Coal Co. v. Monahan, — Md. —, 104 Atlantic 480, p. 484.

MINING RIGHTS IN SURFACE—ESTOPPEL.

Mining rights in the surface are appurtenant to the underlying coal and these rights may be restricted or narrowed to some extent under principles and rules of interpretation of the law of estoppel by the condition in which the surface is found in consequence of improvements at the date of the exercise thereof; but such rights can not be deemed to have been extinguished by the mere use and improvement of the surface with the knowledge of the owner of such mining rights, nor by his nonuser thereof.

Preston County Coke Co. v. Elkins Coal & Coke Co., — W. Va. —, 96 South-eastern 973, p. 975.

POSSESSION OF SURFACE—OWNERSHIP OF COAL—ADVERSE POSSESSION.

The surface and the underlying coal of certain lands had been severed by a conveyance of the surface and a reservation of the coal. The owner of the surface through a long period of time took from existing openings of the veins of coal, coal for his own domestic purposes and occasionally permitted neighbors to so take, and in other instances himself digging the coal from such openings and selling it to his neighbors for domestic purposes. Such acts, though continued for a long period of time, do not constitute adverse possession of the coal. The possession of the surface with the mere incidental

use of the coal such as any person occupying the surface might from time to time be tempted to make and might make as a mere incident to the use of the surface would not give adverse possession to the coal. For possession of coal to be adverse it must be used in an enterprise different and distinct from the use of the surface, and use of the coal merely incidental to the possession of the surface is not sufficient.

Vance v. Clark, 252 Federal 495, p. 498.

RESERVATION OF COAL—EFFECT AND EXTENT.

A deed conveying certain described land contained a provision as follows: "Except any timber and coal upon said land that the party of the first part may want to use during his lifetime." The exception shows that the use referred to should last no longer than the grantor's lifetime. Only such coal and timber were excepted from the conveyance as the grantor might want for his personal use during his lifetime and not such coal and timber as he might desire to sell to others. Only a personal use by the grantor during his lifetime was contemplated, and not a saleable use that would continue in effect after his death. A sale of timber or coal by the grantor after the conveyance would give no title to the purchaser.

Bates v. Gayheart, — Ky. —, 205 Southwestern 559, p. 560.

RESERVATION OF COAL FOR USE OF GRANTOR—CONSTRUCTION AND EXTENT.

A land owner by deed granted the right to mine and remove the entire amount and body of the underlying coal without reservation, let, or hindrance, but reserved to himself so long as he should choose to exercise it, the right to take coal from any bank on the land conveyed for his own fuel, the reservation being subject to the superior right of the grantee to mine and extract the coal until exhausted. The right reserved to take and use was subject to the superior right of the grantee to mine and remove the entire body of the coal. This particular reservation made by the grantor must necessarily terminate with the exhaustion of the coal mined and the coal-mine operator is under no duty or obligation to leave unmined a body of coal in the land for the use and benefit of the grantor or his assigns.

Godfrey v. Weyanoke Coal & Coke Co., — W. Va. —, 97 Southeastern 186, p. 188.

EJECTMENT—RIGHT TO CREDIT FOR IMPROVEMENTS.

In an action of ejectment for the possession of coal lands where there was a real contest as to the title of such lands and the possession was awarded the complainant, the defendant was not entitled to any credit by way of improvements for a railroad track, where the railroad

was built on a right of way conveyed to it and the railroad was not in fact constructed by the defendant.

Staub v. Sewanee Coal, Coke & Land Co., — Tenn. —, 205 Southwestern 320 p. 322.

TRANSPORTATION OF COAL—CONFISCATORY RATES—RECOVERY FOR EXCESSIVE FREIGHT.

The Legislature of North Dakota fixed by statute a maximum rate for the transportation of lignite coal. The carriers of the State refused to carry coal because of the alleged confiscatory rate. The supreme court of that State approved the statutory rate but on appeal, the United States Supreme Court held that the rate was confiscatory. In an action by a railroad company to recover from a coal-mining company the difference between the confiscatory rate it was compelled to accept, while the law was held valid by the State supreme court, and the reasonable rate of transportation it was entitled to charge after the United States Supreme Court held the statutory rate to be confiscatory, the cause of action and the right to recover is held to be upon a contract implied either in fact or in law. The complaint in such an action must state facts from which the legal conclusion of liability on the part of the shipper follows; but an allegation that the coal was shipped by the complainant for the defendant under the statutory rate is only a legal conclusion. The facts stated must bring the complainant within the operation of some rule of substantive law according to which a liability may be found to exist and must be sufficient on which to base a finding that the defendant was indebted to the complainant under an obligation in the nature of a contract. The facts pleaded lead to the conclusion that there was no contract in fact, either express or implied, to pay any rate other than the statutory rate as filed and published by the railroad company.

Minneapolis, etc., R. Co. v. Washburn Lignite Coal Co., — N. Dak. —, 168 Northwestern 684.

OIL AND OIL LANDS.

OIL AS PERSONAL PROPERTY—PRODUCTION.

Oil in place is a part of the land in which it is found or from which it is obtained, but when brought to the surface and reduced to possession, it ceases to be real estate and becomes personal property, and as such, may be subject to partition among its joint owners.

Warren v. Boggs, — W. Va. —, 97 Southeastern 589, p. 592.

GRANT OF OIL ROYALTIES—EFFECT.

A deed by the owners of land covered by an oil and gas lease conveyed to the grantee all the royalty interest in the oil. Such a deed has the same effect as a grant of the oil itself.

Snodgrass v. Koen, — W. Va. —, 96 Southeastern 606, p. 608.

OIL OPERATIONS—JUDICIAL NOTICE.

The courts take judicial notice of the fact that oil and natural gas are mined by means of deep wells drilled into the earth.

Kemp v. Barr Gas Co., — Kans. —, 175 Pacific 938, p. 939.

CONVEYANCE OF OIL AND GAS—FEE SIMPLE TITLE.

The owners of land on which existed an oil and gas lease by deed granted to a third person all the royalty interest in the oil and rentals for gas wells and in addition conferred upon the grantee exclusive authority to drill for oil and gas after the termination of the existing lease, without restriction or limitation upon the exercise of such right. Such deed vested in the grantee the fee simple title to the oil and gas in place in the land.

Stelgrass v. Koen, — W. Va. —, 96 Southeastern 606, p. 608.

GRANT OF RIGHT TO PROSPECT FOR OIL AND GAS—RIGHT OF LAND OWNER.

The statute of Texas (General Laws 33d Leg., Vernon Sayle's Ann. Civ. Stats. 1914, sec. 5920g), provides that the issuance of a permit or lease to prospect for oil or the filing of the prospector's affidavit on unsold land shall not prevent the sale of the land, but if sold after an application, the purchaser shall not be entitled to any part of the proceeds of any mineral or mining location, nor other compensation, nor shall he have any action for damages done to the land resulting from the proper working or operation under the mining permit. Under this statute where the complainant's right to land was forfeited for nonpayment of interest in 1914 and reawarded to him in 1916, he had no title to the land within the meaning of this statute where the applications were made prior to 1916.

South West Texas Oil & Gas Co. v. Boykin, — Tex. Civ. App. —, 206 Southwestern 216, p. 217.

SALE OF LEASE—RIGHTS OF LAND OWNER.

A lessor of an oil and gas lease that prohibited the transfer without his consent, can not maintain an action for damages for his aliquot part of a total consideration received by the lessee for the particular lease and for several other leases all sold for a bulk consideration.

Moherman v. Anthony, — Kans. —, 175 Pacific 676.

SEPARATION OF OIL AND GAS RIGHTS—INJUNCTION.

A land owner executed an oil and gas lease upon his land to certain named lessees. The lessees by a contract between themselves separated the gas and oil rights, one taking the gas and the other the oil.

Under such an agreement, the owner of the gas rights can not enjoin the owner of the oil rights from operating an oil well in violation of the rights of the land owner, the original lessor.

Arnold v. Garnett Light & Fuel Co., — *Kans.* —, 174 *Pacific* 1027, p. 10128.

INJUNCTION TO PREVENT TRESPASS AND WASTE.

Courts of equity generally refuse to interfere with the possession of land before the rights of the parties have been determined at law; but where the possession of a trespasser is not exclusive and is in fact only an interruption of the prior open, notorious, and peaceable possession of the complainant, an injunction may be allowed, especially where the entry by the defendant was for the purpose of committing waste in the taking and removing oil from the premises.

Collier v. Bartlett, — *Okla.* —, 175 *Pacific* 247, p. 250.

RECEIVERSHIP—PROTECTION FROM WASTE AND DESTRUCTION.

Under a charge of fraud in obtaining possession of oil lands, and pending proceedings upon an application for a patent and where the charges of fraud are under investigation, the Government is entitled to protection by a court of equity and by a receivership of the property involved to prevent waste and destruction pending the final determination of its rights in the Land Department.

Devil's Den Consolidated Oil Co. v. United States, 251 *Federal* 548, p. 554.

ADVERSE POSSESSION—TITLE OF MARRIED WOMAN.

A married woman, by gift or conveyance from a person in possession claiming title, acquired title by adverse possession, and this can not be affected by the acts of her husband. Under a title so acquired she or her devisee in possession after her death may execute a valid oil and gas lease granting rights prior and superior to an oil and gas lease of the land executed by the husband.

Big Blaine Oil & Gas Co. v. Yates, — *Ky.* —, 206 *Southwestern* 2, p. 4.

ENTRY UNDER GIFT—CLAIM OF TITLE—ADVERSE POSSESSION.

A husband and father purchased 50 acres of land, paying a part of the consideration and taking a title bond for a deed. Immediately after this purchase the husband and father disappeared from the community and did not return and made no further claim to the 50-acre tract or to other lands owned by him at the time of his departure. Shortly after his disappearance an adult son took possession of the 50-acre tract, claiming it as his own and claiming that his father purchased it for him. While so in possession he paid the balance due on the purchase price and under his claim of title occupied and improved the land. This son purchased the entire tract left by the father on

foreclosure sale and obtained a deed therefor and conveyed part of it to the mother. Later this son "turned over" to the mother the 50-acre tract, who took possession of it and continued to occupy, use, and claim it until her death. She held and occupied the land for some 25 years and during that time executed two leases for the privilege of mining coal under the land and finally disposed of it by will to another son. Subsequently the devisee executed an oil and gas lease for the land. Two years after the mother's death the husband returned, claimed the 50-acre tract as his own and executed an oil and gas lease thereon. In a controversy between the lessees of the two leases, the lessee of the devisee was held to have the prior and superior right on the theory that the possession of the land by the son under a claim of gift and the continuous possession of the mother as the grantee or donee of the son was adverse to the title and right of the husband and father and that the title vested in the mother by virtue of her adverse possession.

Big Blaine Oil & Gas Co. v. Yates, — Ky. —, 206 Southwestern 2, p. 4.

PERMIT TO OPERATE OIL LANDS—SUBSEQUENT PURCHASER—RECOVERY FROM OIL PROSPECTOR.

An oil prospector on December 1, 1915, obtained a permit to operate certain lands for oil under the statute of Texas. The land at that time was owned by an applicant to purchase the same as public school lands. After the grant of the permit to prospect for oil the purchaser under the statute forfeited his interest in the land for the nonpayment of interest, but was given the right to repurchase after classification and reappraisement. After his repurchase he brought suit against the oil prospector for the statutory rent under the permit to operate for oil. The complainant at the time of the institution of the suit was not the owner of the land within the meaning of the statute of Texas giving to the land owner a rental of 20 cents per acre per annum from a permittee operating the land for oil.

South West Texas Oil & Gas Co. v. Boykin, — Tex. Civ. App. —, 206 Southwestern 216, v. 217.

NATURAL GAS.

NATURE AS COMMODITY AND FUEL.

Natural gas is a commodity as much so as coal, and like coal it is a fuel and as such is used for domestic and industrial purposes. It is a subject marketable, either within the State wherein it is produced or in a State to which it is transported and sold.

Suttle v. Hope Nat. Gas Co., — W. Va. —, 97 Southeastern 429, p. 31.

GRANT OF ROYALTIES—EFFECT.

A deed by the owner of land covered by an oil and gas lease conveyed to the grantee all the royalty interest in the natural gas. Such a deed has the same effect as a grant of the gas itself.

Snodgrass v. Koen, — W. Va. —, 96 Southeastern 606, p. 608.

SALE OF SURPLUS GAS—CONSTRUCTION AND MEANING.

A natural gas company having developed a quantity of gas in one district, and having large quantities of gas from other sources, sold to another company such gas from the first district as the seller did not desire for use to supply its own customers or for the drilling of wells and such as the purchasing company might wish to purchase. The sale was limited to the "surplus natural gas" from the particular district that the seller did not need for its own use. Under the contract the seller was not limited in the use of the gas from the particular district named and the fact that it had other supplies in no way restricts its right to use to any extent for itself or customers the gas in the district named. In any event the purchasing company could claim no more than the surplus gas remaining after whatever use the selling company chose to make of the gas produced in that district.

Elk Natural Gas Co., v. Ridgeway Light & Heat Co., — Pa. —, 104 Atlantic 546.

PURCHASE FOR GASOLINE PURPOSES—LIABILITY FOR DECREASED FLOW.

An oil company sold to another the right to take pipe, and utilize gas from its oil wells and manufacture gasoline therefrom on the leased premises. The purchaser was to furnish at his own expense the instrumentalities necessary and usual in the process of producing gasoline and to pay to the oil company a stipulated part of the profits derived from the business. The oil company used certain patented processes to accelerate oil production from the wells and thereby unfitted the gas escaping therefrom for use in the manufacture of gasoline and rendered the manufacture of gasoline unprofitable and compelled the purchaser of the gas to abandon the manufacture of gasoline at great loss and damage, for which he sued the oil company. The oil company by contracting for the sale of the gas to be manufactured into gasoline did not restrict its right to develop and exploit the oil field and did not by the contract debar itself from the use of such means for stimulating the flow of oil as science and experience have proved to be advantageous, and the oil company can not be held liable in damages for losses thus accruing to the purchaser of the gas for gasoline purposes.

Beeson v. Drake Oil Co., — W. Va. —, 97 Southeastern 414, p. 415.

WASTE PREVENTED—ACTION BY STATE.

The statute of Kansas (sec. 4970, General Statutes, 1915) makes it unlawful for any person to permit the flow of gas from a well to escape into the open air. The enforcement of this statute is a public duty and prosecutions under it must be in the name of the State. If property rights of an individual are injured by a violation of the statute an appropriate action will lie in favor of such individual. But one lessee under an oil and gas lease can not enjoin another lessee, where their rights under the lease had been separated by agreement, from permitting gas to escape from the well into the open air.

Arnold v. Garnett Light & Fuel Co., — Kan. —, 174 Pacific 1027, p. 1028.

JUDICIAL NOTICE OF OPERATIONS.

The courts take judicial notice of the fact that natural gas and oil are mined by means of deep wells drilled into the earth.

Kemp v. Barr Gas Co., — Kan. —, 175 Pacific 988, p. 989.

EMINENT DOMAIN.

MINING A PUBLIC USE—LIBERAL CONSTRUCTION OF STATUTE.

The power of the Legislature of Utah in making mining a public use is conceded, and the purpose of the statute should not be hindered by any narrow or technical objections. The importance of encouraging the mining industry of the State must be kept in view, and this was the object, intent, and purpose of the legislature in passing the act, and its wisdom, policy, and expediency were thereby determined, and a reasonable, fair, just, broad, and liberal view should be taken by the court in the interpretation of the provisions of the statute.

Monetaire v. Columbus Rexall Consolidated Mines Co., — Utah —, 174 Pacific 172, p. 176.

MINING—PUBLIC USE AND PUBLIC WELFARE.

There is a tendency to break away from the old rigid rules on the subject of "public use" and to enlarge the definition of the term so as to make it synonymous with "public welfare," and the test of "public welfare" instead of the old doctrine of "public use," is being gradually extended with the promise of its becoming the prevailing doctrine in most jurisdictions. This rule has been adopted and applied in the State of Utah to mining.

Monetaire v. Columbus Rexall Consolidated Mines Co., — Utah —, 174 Pacific 172, p. 176.

MINING A PUBLIC USE.

Section 3588 of the Utah Compiled Laws of 1907, as amended by the Laws of 1909 (p. 50), enumerates the specific purposes for which the right of eminent domain may be exercised. Subdivision 6 of this act provides that eminent domain may be exercised in behalf of roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places, to facilitate the milling, smelting, or other reduction of ore or the working of mines, quarries, coal mines, or mineral deposits; outlets, natural or otherwise, for the deposit or conduct of tailings, refuse, or water for mills, smelters, or other works for the reduction of ore, or for mines, quarries, coal mines, or mineral deposits; mill dams, natural gas or oil (pipe) lines, tanks, or reservoirs, also any occupancy in common with the owners or possessors of different mines, quarries, coal mines, mineral deposits, mills, smelters, or other places for the reduction of ores, or any place for the flow, deposit, or

conduct of tailings or refuse matter. It was the intention of the legislature by this original section and by section 3590 to declare mining generally and the development of mines and mineral deposits a public use in furtherance of which the right of the exercise of eminent domain was applied with full force and effect.

Monetaire v. Columbus Rexall Consolidated Mines Co., — Utah —, 174 Pacific 172, p. 174.

PROPERTY DEVOTED TO PUBLIC USE—APPROPRIATION FOR SECOND USE.

The rule under the Utah statute is that property devoted to a public use can only be taken under the eminent domain statute "for a more necessary public use" than the one to which it is devoted. This rule does not prevent the appropriation under section 3588, Compiled Laws of 1907, as amended by the Laws of 1909 (p. 50), of the unused portion of an existing mining tunnel by a different mining company where it is not sought to appropriate the tunnel and to dispossess the owner of his property rights therein or of its use, but only to condemn the right to use the tunnel in common with the owner, and in fact to condemn the unused capacity of the tunnel. Such an appropriation does not deprive the owner of his ownership and use, but only to obtain a second right to use the property or right of way in common with the owner. In condemning the right of way to a joint use, or a use in common, all that the condemner gets or can get is the right to use that which the present owner possesses but which he does not and can not use. If the tunnel, the second right to the use of which was sought to be condemned, was used to its full capacity by the first owner, then there is nothing left to condemn; but where a tunnel is not used by the owner and possessor to its full capacity and it is reasonably clear that a joint use or a use in common is practicable, then the unused portion of such a tunnel may be condemned upon proper compensation being made to the owner and possessor thereof.

Monetaire v. Columbus Rexall Consolidated Mines Co., — Utah —, 174 Pacific 172, p. 176.

USE BY LANDOWNER OF LAND APPROPRIATED.

Land appropriated as a right of way for a railroad company may be put to many other uses besides operating a railroad thereon, and while the landowner may have a right to mine the ground condemned, he has no right to carry on mining operations upon the land so taken in such manner as to interfere with any proper use of the land by the railroad company.

Tyson Creek R. Co. v. Empire Mill Co., — Idaho —, 174 Pacific 1004, p. 1006.

PERMIT TO DIVERT WATERS FOR MINING PURPOSES—PROOF.

In appropriation proceedings for land for a right of way for a railroad, a permit issued by a State engineer to a person not a party to the proceedings granting the right to appropriate and divert waters for mining purposes on the lands in question is not admissible in evidence, especially where such permit was issued after the proceedings were begun and summons issued.

Tyson Creek R. Co. v. Empire Mill Co., — Idaho —, 174 Pacific 1004, p. 1006.

RIGHT OF WAY—CONDEMNATION OF MINING TUNNEL.

By section 3588 of the Utah Compiled Laws of 1907, as amended by the Laws of 1909 (p. 50), the right of eminent domain may be exercised to condemn an easement in or through an existing tunnel owned and used by a mining company. Subdivision 5 of section 3590, Compiled Laws of 1907, provides that all rights of way for any and all purposes mentioned in section 3588, shall also be subject to a limited use in common with the owners thereof when necessary. Tunnels, when necessary, are therefore subject to a limited use in common precisely as all other rights of ways or easements mentioned in the statute. It follows that where a tunnel is used for the purpose of transporting ore, but is not used to its full capacity by the owner, the owner of another mining claim may condemn the right to the joint use of the tunnel with the owner for the purpose of transporting ore.

Monetaire v. Columbus Rexall Consolidated Mines Co., — Utah —, 174 Pacific 172, p. 175.

RIGHT OF WAY—WATER FOR MINING PURPOSES.

The act of February 1, 1905 (33 Stat. 628), authorized a grant of rights of way for the construction and maintenance in national forests of dams, reservoirs, and water conduits to citizens and corporations for municipal or mining purposes and for the purpose of milling and reduction of ores. This act was intended to enlarge the rights theretofore existing and does not in any sense limit their enjoyment to the persons to whom they were granted. Under this act a right of way may be obtained by citizens or private corporations for the purpose of furnishing water for the operation of mining or mineral works not owned or operated by them.

Pine Mountain Water Co., In re, 46 Land Decisions 240, p. 242.

JOINT USE OF TUNNEL—NECESSITY.

The owner of a mine sought by appropriation proceedings to condemn a joint use of a mining tunnel, the use to be in connection with that of the owner of the tunnel, and where the tunnel was not used

to its full capacity by the owner. Proof that the condemner owned a mine and that the cost of the construction of a separate tunnel would be too great to justify the construction of a separate tunnel and if the condemner can not reach his mineral deposits through the existing tunnel, the great cost of constructing a separate tunnel will prevent him from successfully developing and removing his mineral deposits. This is *prima facie* proof sufficient to show that it is necessary for the condemner to have a joint use of the tunnel in order to develop and mine the ores in his mining claim.

Monetaire v. Columbus Rexall Consolidated Mines Co., — Utah —, 174 Pacific 172, p. 178.

IMPROVEMENTS ON GROUND—PROSPECT HOLE.

A prospect hole on a placer mining claim is not an improvement within the meaning of the Statute of Idaho (sec. 5221, Revised Codes). Such a prospect hole adds nothing to the value of the land but only tends to show what its actual condition is.

Tyson Creek R. Co. v. Empire Mill Co., — Idaho —, 174 Pacific 1004, p. 1006.

DISCOVERY OF MINERAL—EFFECT ON VALUE.

After proceedings were instituted under the eminent domain statute for a right of way of a railroad and summons was served, gold was discovered within the ground sought to be appropriated. The gold was the property of the land owner and if in quantity and condition to be profitably mined he was entitled to show such fact in order to obtain compensation for any damage he might suffer by reason of interference by the location of the railroad in the use and enjoyment of his land for mining purposes. It was error for the court to instruct the jury to the effect that if the market value of the land was not affected by the presence of the mineral deposit at the time of the issuance of the summons then the evidence of mineral deposits could not be considered in fixing the damages to the land.

Tyson Creek R. Co. v. Empire Mill Co., — Idaho —, 174 Pacific 1004, p. 1006

APPROPRIATION OF RIGHT TO JOINT USE OF A TUNNEL—MEASURE OF DAMAGES.

Where it is sought to condemn a right to use a mining tunnel in connection with the use already made of the tunnel by the owner, the compensation to be paid therefor can not be fixed in a lump sum but some just method of compensation is all the law contemplates and is all that can be required in such a case. For this purpose where the parties are not able to agree some equitable method of determining and fixing the compensation for the joint use must be devised which must be based upon all the known facts and circumstances and must be such as to reflect justice in each case.

Monetaire v. Columbus Rexall Consolidated Mines Co., — Utah —, 174 Pacific 172, p. 176.

APPROPRIATION OF PROPERTY—BURDEN OF PROOF.

In a proceeding by one mine owner to condemn the right to a joint use of a mining tunnel where the tunnel was not used to its full capacity by the owner, the burden of proof rests upon the condemner to show that the use is a public use and that its exercise is necessary in the particular case. Both questions must be determined by the court and both must be determined in favor of the condemner as preliminary questions before the property or the right to an easement therein can be condemned. But as mining is by the statute made a public use and as the proposed condemnation or joint use of the tunnel was for mining purposes and to develop the mineral resources, the right sought to be acquired was for a public use.

Monetaire v. Columbus Rexall Consolidated Mines Co., — Utah —, 174 Pacific 172, p. 177.

WORDS OMITTED FROM PUBLISHED ACT.

Section 3588 of the Utah Compiled Laws of 1907 in reciting the purposes for which the right of eminent domain may be exercised among other things recited: "natural gas or oil-pipe lines or reservoirs." The act as published officially reads: "natural gas or oil lines, tanks or reservoirs." The court in construing the act followed the correct printing as found on file in the office of the secretary of state.

Monetaire v. Columbus Rexall Consolidated Mines Co., — Utah —, 174 Pacific 172, p. 175.

MINING TERMS.

CASING LINE.

A casing line is a large strong rope used in oil-well drilling to raise and lower the casing.

Long v. Foley, — W. Va. —, 96 Southeastern 794, p. 794.

CLAIM JUMPING.

The location of a mining claim on supposably excess ground within the staked boundaries of an existing claim on the theory that the law governing the manner of making the original location had not been complied with is called "claim jumping."

Nelson v. Smith, — Nev. —, 176 Pacific 261, p. 265.

HOLE MAN.

A "hole man" in mining operations is an employee whose duty it is to load the holes with explosives after they have been drilled.

De Nardo v. Stephens-Jackson Co., — Pa. —, 104 Atlantic 584, p. 585.

GRIZZLIES.

Grizzlies are iron or steel bars used to sort or separate the rock or ore as it falls into the ore chutes.

Suborich v. Alaska United Gold Min. Co., 251 Federal 885, p. 886.

JACK POLE.

A jack pole or post is a pole set solidly in advance of a coal-cutting machine and to which is attached the chain that moves the machine forward in the process of coal cutting.

James v. Winnifred Coal Co., — Iowa —, 169 Northwestern 120, p. 123.

RABBLE RAKE.

A rabble rake is a rake constructed of metal which revolves on a track and passes over or through the molten mass of ore in the kiln for the purpose of stirring the hot ore.

Athletic Min. & Smelting Co. v. Sharp, — Ark. —, 205 Southwestern 695, p. 696.

SKIDDOO BELL.

A skiddoo bell is a signal or bell installed at the bottom of a shaft by which the hoisterman may give warning of falling material to the workmen at the bottom of the shaft.

Honey v. St. Regis Min. & Smelting Co., — Mo. —, 205 Southwestern 93, p. 94.

SPRAG.

A sprag is a short piece of wood or prop put under the coal immediately after the coal is cut under to hold the coal and keep it from falling until the loader is ready to let it down and haul it out.

James v. Winnifred Coal Co., — Iowa —, 169 Northwestern 120, p. 123.

STABBER.

A term employed in the work of tubing oil and gas wells to the person whose duty it is to guide the joints suspended by a rope from the derrick to connect with other joints placed in the well.

Long v. Foley, — W. Va. —, 96 Southeastern 794.

MINING CORPORATIONS.

SHARES OF STOCK—NATURE AS PROPERTY.

Shares of stock in a corporation do not constitute negotiable paper, but are sometimes spoken of as possessing elements of quasi negotiability and the necessities of business require that shares of stock shall be treated *prima facie* as evidence of unincumbered ownership of the holder thereof named in the certificate and upon the books of the company.

Paine, Webber & Co. v. Arkansas & Arizona Copper Co., — Ark. —, 206 South-western 447, p. 449.

SITUS OF SHARES OF STOCK.

Ordinarily the situs of shares of stock of a mining company is at the residence of the owner or at the domicile of the corporation.

Warren v. Brown, — Mass. —, 121 Northeastern 69, p. 70.

ISSUE OF STOCK—SUFFICIENCY OF CONSIDERATION—VALUE OF SERVICES.

The constitution of Kentucky (sec. 193), provides that no corporation shall issue stock except for an equivalent in money paid, labor done, or property actually received and at a greater value than the market price for such labor or property. This provision forbids the issue of stock in exchange for work or services except when the market price of such work or services shall be equal to the par value of the stock issued.

Detroit-Kentucky Coal Co. v. Bickett Coal & Coke Co., 251 Federal 542, p. 546.

CONTRACT FOR SALE OF STOCK—CONSIDERATION.

Under the Kentucky constitution and statute prohibiting the issuing of corporation stock for services unless the value of the services rendered shall equal the par value of the stock, it is the right and duty of a corporation to refuse to carry out a contract to issue stock in payment of services where the par value of the stock is clearly and largely in excess of the value of such services; and the corporation may be enjoined and specific performance of such a contract can not be enforced. Such a contract can not be validated by an offer on the part of the purchaser of the stock, made after the suit was commenced, to pay a stated sum of money in addition

to the services rendered, and especially where there was nothing to show that the value of the services rendered and the sum proposed to be paid equalled the amount of stock proposed to be issued.

Detroit-Kentucky Coal Co. v. Bickett Coal & Coke Co., 251 Federal 542, p. 546.

SALE OF STOCK—PAYMENT IN SERVICES—ENTIRE CONTRACT—INVALID
IN PART.

The constitution and statutes of Kentucky forbid the issuance of corporate stock for services unless their value shall equal the face value of the stock. A Kentucky coal company largely indebted and in failing circumstances entered into an agreement with a third person by which the capital stock of the coal company was to be increased and such third person was, in consideration of securing certain stated financial aid for the corporation and by which it could pay its existing debts, and begin the mining of coal, to receive and to have issued to him 51 per cent of the capital stock of the coal company. This contract was clearly illegal as against the provisions of the constitution and the statutes and the stock provision is not separable from the other provisions of the contract so that the remaining provisions can not be specifically enforced. The finance contract and the sales contract are interdependent and are interwoven, the substantial consideration of each being the agreement to furnish money for development and operation. The contract is entire and as an inseparable part is void, it can not be enforced.

Detroit-Kentucky Coal Co. v. Bickett Coal & Coke Co., 251 Federal 542, p. 547.

PROPERTY OF STOCKHOLDERS—SHARES OF STOCK—NATURE.

In most aspects the property of stockholders in mining corporations in their respective shares of stock is separate and distinct from the property of the corporation. But in a remote sense a certificate of stock is an interest in the property of the corporation which may be in a State different from either the corporation or the certificate of stock.

Warren v. Brown, — Mass. —, 121 Northeastern 69, p. 70.

TRANSFER OF STOCK—BONA FIDE PURCHASER.

Stock brokers purchasing the stock of a mining company from a stranger or selling such stock on the market under their guarantee are not entitled to protection as bona fide purchasers and can not compel a reissue of stock to them by the corporation, where the certificates had been embezzled by an employee who from a room in a hotel in Kansas City wired the brokers in Boston to make the sale and to remit proceeds, and who subsequently sent a second wire removing any price limit, and offering to accept ten to twelve cents

less than the market price for the stock and insisted on a sale at any price and of a prompt return of the proceeds; and where the name of the seller was not the name in the certificates of stock and no effort was made on the part of the brokers to require a guarantee of the party selling or to require the seller to identify himself as the owner of the shares.

Paine, Webber & Co. v. Arkansas & Arizona Copper Co., — Ark. —, 206 South-western 447, p. 449.

AGENCY—SALE OF STOCK—CONSTRUCTION.

A contract of agency authorized the agent to sell and dispose of the shares of stock owned by the principal in any joint stock or incorporated company but limited the agency "to cover the State of Nevada only." The parties to the agreement had been engaged as joint owners of a mine and mining claims in Nevada but had ceased to be jointly active and the principal had gone to a foreign country. The Nevada property was purchased by a mining company organized in the State of Maine and the parties to the agreement had received shares of stock of the mining company in payment for their interest in the mining property in Nevada. Read in the light of the relation of each of these parties to the other and to the property rights centering in Nevada the contract of agency must be construed to have reference to the property in the State of Nevada although the mining corporation had its residence in the State of Maine.

Warren v. Brown, — Mass. —, 121 Northeastern 69, p. 70.

RIGHT OF STOCKHOLDER TO SUE—RELATION OF STOCKHOLDER—PLEADING.

In an action by a stockholder against a mining corporation and others to rescind certain alleged fraudulent transactions on the part of the corporation, an averment that the complainant owned a certain percentage of the stock of the corporation is sufficient to show him to be a stockholder and the question of whether he should be permitted to maintain the suit is a matter of defense.

Steitz v. Old Dominion Copper Min. & Smelting Co., — N. J. Equity —, 104 Atlantic 214, p. 215.

SUIT BY STOCKHOLDER—FAILURE TO REQUEST CORPORATION TO SUE.

A stockholder of a foreign corporation brought suit for the rescission of certain alleged fraudulent transactions or in lieu thereof for an accounting. A motion for a nonsuit can not be sustained on the ground that there is no sufficient showing of an effort to have the corporation sue for the alleged wrong and no sufficient excuse for not making such effort, where it appears from the bill that the corporation itself had long since been abandoned by the officers and

managing agents charged with the fraudulent transaction, and where the allegations of the bill show sufficient reason for suit by a stockholder instead of the corporation itself.

Steitz v. Old Dominion Copper Min. & Smelting Co., — N. J. Equity —, 104 Atlantic 214, p. 215.

STOCKHOLDER'S SUIT—PARTIES—FRAUD AND ACCOUNTING.

A stockholder's suit demanding a rescission of certain alleged fraudulent transactions, or an accounting of the resultant profits of such transaction, will not be dismissed in view of the New Jersey chancery rule because the original corporation which had in fact long ceased to exist and the new corporation that was formed as a culmination of the alleged fraudulent transaction were not made parties, where the persons and corporations perpetrating the alleged fraud were parties to the suit.

Steitz v. Old Dominion Copper Min. & Smelting Co., — N. J. Equity —, 104 Atlantic 214, p. 215.

STOCKHOLDER'S SUIT—LACHES—PLEADING.

A suit by a stockholder for the rescission of alleged fraudulent transactions by the officers and managing agents of the corporation will not be dismissed on the ground of laches and for a failure for a period of 25 years to sue, where the allegations of the bill are sufficient to show a reasonable excuse for the delay.

Steitz v. Old Dominion Copper Min. & Smelting Co., — N. J. Equity —, 104 Atlantic 214, p. 215.

STOCK HELD IN TRUST UNDER POOLING AGREEMENT—AUTHORITY TO SELL.

The owners of mining property in Nevada sold it to a mining company organized in Maine and accepted shares of the stock in payment for the property. Thereafter a pooling agreement was entered into by the stockholders and all the stock transferred to a trustee to hold under that agreement. One of the former joint owners of the mining property, who had left the country, gave his former joint owner a power of attorney to sell the shares of stock owned by him in any "joint stock or incorporated company," but limited the power "to cover the State of Nevada only." This authority when construed in connection with the relation of the parties, their former joint ownership of the mining property, the sale and acceptance of the stock in payment was sufficiently broad, as against the express limitation, to authorize the agent to sell and dispose of the stock of the Maine mining company held in trust under the pooling agreement; and the principal, executing the power of attorney, can not compel the mining company to issue to him shares of stock in

lieu of those sold and transferred by the trustee under the pooling agreement.

Warren v. Brown, —, Mass. —, 1721 Northeastern 69, p. 70.

AUTHORITY OF PRESIDENT TO EXECUTE NOTES.

The president of a mining corporation has no implied authority to execute notes of the company without the consent or order of the directors. The fact that the president owned nearly all of the stock does not give him such authority.

Goodman Mfg. Co. v. Mammoth Vein Coal Co., — Iowa —, 168 Northwestern 912, p. 914.

AUTHORITY OF PRESIDENT—GRANT OF LAND—RIGHT OF WAY.

The board of directors of a sulphur-mining company authorized its president to sell and convey to a canal company a right of way through and across its property. By inadvertance or otherwise the conveyance by the president was for the land itself to be covered by the right of way. The president, under the authority given him to convey a right of way, which is only a servitude, had no power to convey and transfer the fee simple title to the land, and the corporation may, by proceedings in equity, set aside the conveyance or confirm it as a sale of a servitude only.

Louisiana Sulphur Min. Co. v. Brunstone, etc., Canal Co., — La. —, 79 Southern 324, p. 325.

UNAUTHORIZED CONVEYANCE BY PRESIDENT—REFORMATION DENIED.

The board of directors of a mining corporation by a resolution authorized its president to execute a deed or instrument conveying a right of way to a canal company for a canal over and through the lands of the mining company. The president, inadvertently or otherwise, executed a deed absolute for the strip of ground for the canal instead of a deed granting a mere servitude and right of way. The mining company is not entitled to a reformation of the deed of conveyance in the absence of proof of a mistake on the part of the canal company. The estate in the land desired by the canal company and its intention in this regard could be shown only by proof of a resolution of the board of directors of the canal company; and in the absence of such proof a reformation of the instrument must be denied, as equity can reform an act only to make it conform to the true intention of the parties.

Louisiana Sulphur Min. Co. v. Brunstone, etc., Canal Co., — La. —, 79 Southern 324, p. 326.

KNOWLEDGE OF OFFICERS—INNOCENT PURCHASER.

A mining corporation taking the assignment of an oil and gas lease from its principal officers, who had full information of the rights of third persons, can not occupy the position of an innocent purchaser without notice.

Wallawalla Oil, Gas & Pipe Line Co. v. Vallentine, — Wash. —, 174 Pacific 980, p. 981.

AGENCY—DECLARATIONS OF AGENT—RES GESTAE.

Where an agency is prima facie established by the acts of the alleged agent in the sale and conveyance of mining property, the declarations of the alleged agent are admissible in corroboration where they constitute a part of the res gestae and were made at the time of the transaction and may show that the agent acted as such and not on his individual account.

Hope v. Berger Min. Co., — Cal. App. —, 174 Pacific 932, p. 934.

AGENCY—PROOF.

In an action by a corporation in relation to mining property purchased by it through a promoter the acts themselves of the promoter are competent evidence of his agency.

Hope v. Berger Min. Co., — Cal. App. —, 174 Pacific 932, p. 933.

CORPORATE LIABILITY STATUTE—APPLICATION TO INJURIES.

The Arkansas corporate liability act (Acts 1913, p. 734), as correctly published by the secretary of state, applies to all injuries inflicted by a corporation and is not confined to injuries in death cases only.

Athletic Min. & Smelting Co. v. Sharp, — Ark. —, 205 Southwestern 695, p. 697.

LIABILITY OF PROMOTERS—FRAUD—PROOF AND INFERENCES.

A corporation was organized to purchase and operate a mining property in Montana. One of its organizers was active in its promotion and after the organization of the company sold his stock. In an action against the estate of the deceased organizer and stockholder it was charged that as a promoter he was interested with an agent who sold the mining property to the corporation and received a share of the commission but fraudulently concealed the fact from his associates and that he represented that in the purchase of the property no commission was to be paid out of the purchase money. The evidence showed that the deceased promoter did receive a large sum from the purchase money paid for the property, but it was reasonably possible under the evidence that it was received by him

for a different purpose and one that did not involve him in the alleged breach of faith and the alleged fraud on his associates. But his death, instead of permitting adverse inferences, made it necessary to show his alleged fraud by substantial proof, and the evidence in support of the charge of fraud is not such as to warrant a decree against his estate.

Gould Mines Co. v. Bauer, 250 Federal 770, p. 778.

LEASE OF LAND—LIABILITY FOR IMPROVEMENTS.

A mining company leased its land by an oral contract to a lessee and orally agreed that the lessee might remove improvements placed upon the land, but if preferred the mining company would pay the lessee the value of such improvements. The oral lease was void under the statute of frauds and was determinable at the pleasure of the mining company. But the agreement to pay for the improvements was not within the statute of frauds and on the termination of the lease by the mining company it was liable to the lessee for improvements upon the ground, and this liability included the value of fruit trees or an orchard planted upon the land by the lessee.

Fredell v. Orman Min. Co., — N. C. —, 97 Southeastern 386, p. 387.

CONTRACTS OF INDIVIDUAL AND OF CORPORATION—ENFORCING.

A contract by which the individual contractors agreed to pay for the development of mining property and by which a mining corporation undertook to issue certain stock and pay certain dividends to the contractees developing the mining property, is so far separable that both contracts could be enforced in a single action, or the two could be enforced in separate actions. The fact that an action had been brought to enforce the entire agreement, and the court disclaimed its power to pass upon one part of the agreement, is not a bar to a subsequent action against the mining company to enforce the part of the agreement ratified and assumed by it.

Beltz v. Great West Lead Mfg. Co., 251 Federal 696, p. 699.

EVIDENCE—ADMISSIBILITY OF BOOK ENTRIES.

In an action against a mining corporation to recover the salary of the mine manager the entries in the books of the company made by the mine manager showing the amount of his salary due monthly are properly admissible in evidence.

Schneider v. Oakman Consolidated Min. Co., — Cal. App. —, 176 Pacific 177, p. 178.

SALARY OF MINE MANAGER—AGREEMENT—CONTINUED SERVICE.

A mining corporation employed a mine manager at a stated salary per month from June 3, 1911, to January 1, 1913. After the expiration of this time the mine manager continued working about the affairs of the company, keeping the mine in condition to show to prospective purchasers, performing assessment work on the claims, and otherwise continued working for the company. The law is that where a person employed at a fixed salary continues in the same employment without any new contract, the presumption is that the continued employment is at the same salary.

Schneider v. Oakman Consolidated Min. Co., — Cal. App. —, 176 Pacific 177, p. 178.

BOOK ACCOUNTS—STATUTE OF LIMITATIONS—PROMISE TO PAY.

A mining corporation owed \$1,500 as a balance of the purchase price of a mining claim and a mine. On beginning operations the mining company employed the seller as its mine manager at a stated salary per month. The monthly items of salary were entered in the books of the company and paid for the period of employment. The mine manager continued working for the company without a renewal contract and subsequently entered the salary indebtedness as an item in his account due from the company. In an action to recover the amount of the unpaid salary and the balance of the purchase price the mining company can not successfully plead the statute of limitations to the \$1,500 item, where the president and officers of the company had promised in writing that the claim would be paid, or that "the matter will surely be taken care of in due time."

Schneider v. Oakman Consolidated Min. Co., — Cal. App. —, 176 Pacific 177, p. 179.

INDEBTEDNESS—ACCOUNTS STATED—FAILURE TO OBJECT.

A mining corporation requested its mine manager to render an account for his services and for all sums he claimed to be due him from the corporation. Pursuant to the request the mine manager submitted the statement of his account showing all items due. When the account was rendered it became the duty of the mining company to make seasonable objection thereto if any it had, and on failure to do so the account became an account stated and the foundation of an independent cause of action which rests thereon when a reasonable time has elapsed without any objection being made thereto. Under certain circumstances a failure to object for six months is unreasonable and in one instance where a space of 25 days elapsed without objection being made on the part of the debtor it was sufficient to establish the account as an account stated.

Schneider v. Oakman Consolidated Min. Co., — Cal. App. —, 176 Pacific 177, p. 179.

ACTION AGAINST—SPECIAL APPEARANCE—JURISDICTION OF COURT.

A mining company entered a special appearance to an action and moved the court to vacate, quash, and annul the service of summons. This did not invoke the jurisdiction of the court and give the court jurisdiction of the person of the corporation, but constituted a special appearance only. On the overruling of its motion the defendant corporation did not waive its objection to the jurisdiction by pleading to the merits without asking affirmative relief.

Matson v. Kennecott Mines Co., — Wash. —, 175 Pacific 182.

Matson v. Kennecott Mines Co., — Wash. —, 171 Pacific 1040, rehearing granted.

See *Macario v. Alaska Gastineau Min. Co.*, 96 Wash. 458, 165 Pacific 73.

FAILURE TO APPEAR AT TRIAL—RELIEF FROM JUDGMENT.

Where there has been a trial of a case in the absence of defendant mining corporation, or where a default judgment was rendered on failure of the mining corporation to answer and no exceptions were saved to the action of the trial court, the rulings of the court can not be reviewed on appeal unless the questions raised are jurisdictional.

Uncle Sam's Oil Co. v. Richards, — Okla. —, 176 Pacific 240.

FOREIGN CORPORATION—VENUE OF SUITS.

The statute of Alabama (sec. 6112, Code) provides that a foreign or domestic corporation may be sued in any county in which it does business by agent.

Tennessee Coal, Iron, etc., Co. v. Bunn, — Ala. —, 79 Southern 360, p. 361.

FOREIGN CORPORATION—VENUE OF SUITS—LEGISLATIVE AUTHORITY.

The legislature was the sole and exclusive judge of the expediency and wisdom of the statute making foreign corporations suable in places other than that named in the constitution so long as the rights thereby guaranteed were not affected, and the legislature may grant the right to sue a foreign corporation in counties other than those expressly enumerated in the constitution.

Prairie Oil & Gas Co. v. District Court, — Okla. —, 174 Pacific 1056, p. 1057.

FOREIGN CORPORATION—VENUE OF SUITS—VALIDITY OF STATUTE.

The constitution of Oklahoma authorizes suits to be maintained against a foreign corporation "in the county where an agent of such corporation may be found, or in the county of the residence of the plaintiff, or in the county where the cause of action may arise." The act of 1911 (Session Laws 1910-11, p. 46) authorizing suits to be filed against any foreign corporation doing business within the

State in any county where the corporation has property is not unconstitutional.

Prairie Oil & Gas Co. v. District Court, — Okla. —, 174 Pacific 1056, p. 1057.

SUIT AGAINST FOREIGN CORPORATION—JURISDICTION OF COURT.

A resident stockholder of New Jersey brought suit in that State against a certain named foreign corporation and others for alleged fraudulent transactions of the officers and managing agents of such foreign corporation in which the complainant held stock and by reason of which transactions he was defrauded and damaged. A motion to dismiss the bill on the ground that the court has no jurisdiction to investigate the affairs of a foreign corporation where it had no property within the State can not be sustained where the matters involved in the bill are not internal matters of such foreign corporation but are matters based upon allegations of fraud committed by officers and directors of the corporation against its stockholders.

Steitz v. Old Dominion Copper Min. & Smelting Co., — N. J. Equity —, 104 Atlantic 214, p. 215.

“DOING BUSINESS”—TAXATION OF TANK CARS.

The New Jersey Tank Line Company has its principal business office in the State of New York, its business consists in owning and keeping in repair and leasing to railroads its tank cars. Its leases are made in New York City and its rents are paid there. It receives a certain mileage from the railroad over which its tank cars are operated by the lessees and this is paid as part of the rental and the business of operating such tank cars is entirely that of the lessees. The tank company has no office, place of business, agent, or employee in Louisiana and is consequently not “doing business” in that State and the statute of Louisiana does not confer authority upon the State board of appraisers to assess tank cars within the State.

Union Tank Line Co. v. Day, 143 La. —, 79 Southern 334, p. 335.

MALICIOUS PROSECUTION—LIABILITY.

A mining corporation is liable on a charge of malicious prosecution where it wrongfully procured the arrest and subsequent criminal proceedings on the charge that the person arrested was a labor agent acting without a license under the Virginia law, although the person making the arrest was in the employ of a special detective agency but was giving his entire time and attention to the service and interests of the mining company, and where the company called him a special officer and secured him from the detective agency, and his duties in part were to look after the labor situation, including any violation of law occasioned by labor agents and where the warrant for the arrest

was issued at the instance of the general superintendent of the mining company, and where the warrant was subsequently dismissed by order of the superintendent without further prosecution.

Clinchfield Coal Corp. v. Redd, — W. Va. —, 96 Southeastern 836, p. 838.

MALICIOUS PROSECUTION—ARREST BY PUBLIC OFFICER—LIABILITY.

A mining corporation can not escape liability for malicious prosecution on the ground that the officer making the arrest was acting within his public duties and authority and was not the agent of the mining company, where it appeared that the special officer was employed by a detective agency, but he had given his entire time and attention to the service and interests of the mining company and was called its special officer and was secured from the detective agency for the purpose of keeping order in and around the camp and his duties included looking after the labor situation and any violation of law occasioned by labor agents.

Clinchfield Coal Corp. v. Redd, — W. Va. —, 96 Southeastern 836, p. 839.

MALICIOUS PROSECUTION—LEGAL ADVICE—DEFENSE.

In order that legal advice may be used as a shield against a suit for malicious prosecution instituted against a mining corporation, the legal advice must be given by a person accepted and licensed by the courts as one learned in the law and competent to be advisor to clients and to the court. But a mere consultation with a justice of the peace on the part of the superintendent of a mining company and the issuance of a warrant at the instance of the superintendent can not, in any sense, be deemed legal advice within the meaning of the rule.

Clinchfield Coal Corp. v. Redd, — W. Va. —, 96 Southeastern 836, p. 839.

FORFEITURE OF FRANCHISE—CONSTITUTIONAL AND STATUTORY PROVISION—CONSTRUCTION.

A constitutional or statutory provision for the forfeiture of a charter of a mining corporation to become effective before any legal step has been taken on the part of the State for the assertion of the forfeiture is in derogation of the common law and must be strictly construed.

Elliott's Knob Iron, Steel & Iron Co. v. State Corporation Commission, — Va. —, 96 Southeastern 353, p. 356.

FORFEITURE OF CHARTER—STATUTORY FORFEITURE WITHOUT JUDICIAL PROCEEDINGS.

It requires strong and unmistakable language to authorize a court to hold that the legislature intended to dispense with all judicial proceedings declaring a forfeiture of a charter and the dissolution of a corporation.

Elliott's Knob Iron, Steel & Iron Co. v. State Corporation Commission, — Va. —, 96 Southeastern 353, p. 356.

PRESUMPTION OF CONTINUED EXISTENCE—FORFEITURE OF CHARTER.

Every presumption is in favor of the continued existence and against the conclusion that the charter of a corporation has been forfeited and courts are disinclined to hold that the charter of a corporation has been forfeited, where neither the Commonwealth nor a private person is claiming that such forfeiture has occurred.

Elliott's Knob Iron, Steel & Iron Co. v. State Corporation Commission, — Va. —, 96 Southeastern 353, p. 356.

FAILURE TO PAY REGISTRATION FEE—FORFEITURE OF CHARTER.

The constitution and statutes of Virginia require mining corporations to pay annual registration fees and also provide for the making of annual reports. The failure to pay the registration fee or to make the annual report shall after a stated time operate as a revocation and annulment of the charter of any such corporation. The object of these provisions is not the forfeiture of the charter but the collection for the Commonwealth from every corporation of an annual registration fee and to compel the making of annual reports. The revocation and annulment of the charter on failure is a penalty to be imposed for the failure of a corporation to do the acts required. It is the manifest intent of the constitution and statutes that a corporation shall continue in existence as a source of revenue to the Commonwealth and a forfeiture of its charter defeats such purpose. The constitutional provision is not self-executing and the mining company can not claim that by its failure to pay its annual registration fee it ipso facto forfeited its charter and its existence was so far ended and it was not in being, so as to be assessable with any registration fee or franchise tax for succeeding years.

Elliott's Knob Iron, Steel & Iron Co. v. State Corporation Commission, — Va. —, 96 Southeastern 353, p. 356.

PRINCIPAL AND AGENT.

AGENCY CONTRACT—CONSTRUCTION.

It is permissive to show the circumstances under which a written instrument was executed so far as actually or presumably present to the minds of the parties for the purpose of enabling a court to understand their situation and to apply their words to the right subject matter in the light of all the attendant conditions. Parol testimony is admissible in such case, not to control the written words but to apply them to their proper objects.

Warren v. Brown, — Mass. —, 121 Northeastern 69, p. 70.

CONTRACT OF AGENCY—CONSTRUCTION—SALE OF MINING STOCK.

The owner of certain mining stock executed a power of attorney to another owner of the same stock authorizing the attorney in fact to demand and receive sums due him for or in respect to any share, stock, or interest which he owned and to sell and absolutely dispose of such shares of stock and generally to act in relation to his estate as fully as he could do if personally present. The power of attorney was to remain in force one year and to cover the State of Nevada only. This power of attorney or contract of agency was sufficiently comprehensive to authorize the attorney in fact to transfer the interest of the person executing the power, although no shares of stock stood in his name, but he was the beneficial owner of stock standing in the name of a third person who held such stock as trustee solely for the purpose of executing a pooling agreement. The beneficial right of the principal in the shares thus held was included in the descriptive words "interest in any incorporated company," used in the power of attorney.

Warren v. Brown, — Mass. —, 121 Northeastern 69, p. 70.

PROOF OF AGENCY—ACTS OF AGENT.

In a controversy over the title to mining property where the sale was negotiated by a person representing himself to be the agent of the owner, the acts themselves of the alleged agent are competent evidence of his agency.

Hope v. Berger Min. Co., — Cal. App. —, 174 Pacific 932, p. 933.

ADMISSIBILITY OF DECLARATION OF AGENT.

A prima facie case of agency on the part of a promotor of a corporation in making a sale of mining property to the corporation, may be made by proof of the acts of the alleged agent. When such prima

facie case is made then the declarations of the agent in making the sale are admissible in evidence as a part of the *res gestae*.

Hope v. Berger Min. Co., — Cal. App. —, 174 Pacific 932, p. 934.

POWER OF ATTORNEY—CONSTRUCTION—PLACE OF PERFORMANCE.

A power of attorney executed by the owner of a mining company organized in the State of Maine for the purpose of owning and operating mining property in the State of Nevada authorized the agent and attorney in fact to sell and dispose of any shares of stock held by the grantor in any joint stock or incorporated company. The power of attorney was to remain in force one year and "to cover the State of Nevada only." The limitation of the power to the State of Nevada means that the power of attorney was to be exercised as to property either physically located within that State or deriving its value from ownership of property physically located within that State. The principal and the agent had engaged as joint owners of a mine and mining claims in Nevada, but had ceased to be conjointly active and the grantor had gone to a foreign country. He was giving to his coadventurer a power of attorney with a wide grant of authority for all practical purposes, but was confining it to matters connected with their common rights in mining interests, and there was no other subject matter upon which it could operate, and the grantor had no property in Nevada except that connected with the mining venture in which he and the attorney in fact were interested; and the agreement must be construed to mean that it was to be effective respecting all properties which derived their value from real or personal estate located within the State of Nevada.

Warren v. Brown, — Mass. —, 121 Northeastern 69, p. 70.

LABOR AGENT—CONSTRUCTION OF STATUTE.

The statute of Virginia provides that any person who solicits, hires, or contracts with laborers to be employed by persons other than himself and every agent of such person shall be deemed to be a labor agent. Every such person who shall without a license conduct business as a labor agent is subject to a fine. This statute can not be construed to apply to "every agent of any person who hires laborers" and not "every agent of any person who hires laborers for others than himself." The statute does not prohibit any person, or the agent of any person, who needs men for his own work from hiring them without obtaining a license. What the statute aimed at was "irresponsible and itinerant labor agents," and the words "and every agent of such person" plainly and unmistakably refer to the person "who hires" as a labor agent and not to the "persons other than himself" for whom the laborers are hired.

Clinchfield Coal Corp. v. Redd, — W. Va. —, 96 Southeastern 836, p. 843.

SALE OF MINING CLAIM BY AGENT—RATIFICATION BY PRINCIPAL—
ESTOPPEL.

Where one person without title or authority from the real owner of a mining claim assumes to sell and convey the claim and the true owner knowing the facts consents to and accepts the proceeds of the sale in full satisfaction of his interest, it should in equity operate as a confirmation of the unauthorized sale and preclude the real owner from thereafter asserting his legal title. A sale under such circumstances is treated as the act of the real owner, or it operates in connection with the receipt of the purchase money as an agreement on his part to sell to the purchaser and as payment by the latter to the true owner of the consideration.

Moore v. Rochester Weaver Min. Co., — Nevada —, 174 Pacific 1017, p. 1018

LAND DEPARTMENT.

BUREAU TO DISPOSE OF PUBLIC LANDS—EXCLUSIVENESS.

The sale and disposal of the public lands, including oil lands, has been placed by statute under the control of the Land Department, at the head of which is the Secretary of the Interior, and which includes a bureau headed by the Commissioner of the General Land Office, to whom, as a special tribunal with quasi judicial powers, Congress has confided the execution of the laws enacted for the sale and disposal of the various kinds of public lands.

Devil's Den Consolidated Oil Co. v. United States, 251 Federal 548, p. 554.

JURISDICTION AND JURISDICTION OF COURT.

A court can not lawfully anticipate what the decision of the Land Department may be in respect to any contest arising before it nor direct in advance what its decision should be even in matters of law and much less in respect to matters of fact.

Devil's Den Consolidated Oil Co. v. United States, 251 Federal 548, p. 554.

DECISION OF SECRETARY CONCLUSIVE.

The facts in respect to the mineral character of public land applied for under the laws authorizing its disposition, as well as the facts in respect to the performance of the acts required by the law to be performed by the applicant for a patent, are for the exclusive determination of the Land Department.

Cameron v. United States, 250 Federal 943, p. 946.

POWER TO SET ASIDE LOCATION.

The Land Department when it rejects an application for a mineral patent can go further and set aside the mining location; and it can therefore by direct proceedings, upon notice, set it aside and restore the land to the public domain.

Cameron v. United States, 250 Federal 943, p. 946.

See *Clipper Min. Co. v. Eli Min. & Land Co.*, 194 U. S. 220, p. 223.

Daniels v. Wagner, 205 Federal 238.

PUBLIC LANDS.

APPLICATION FOR LEASE—CONSTRUCTION OF STATUTE.

The amendatory act of 1917 of Washington (p. 599) provides that any citizen finding precious minerals upon the State lands may apply to the commissioner for a lease of any amount not exceeding 80 acres for prospecting purposes, the application to be made by legal subdivisions according to the public land surveys. Prior to this amendatory act, the applicant was required to post up a location notice, set corner posts, and mark the boundaries of the land upon the ground as provided by the United States mining statutes. This amendatory act, though not repealing the existing law, renders it unnecessary for the applicant to post a location notice, set corner posts, and mark the boundaries.

State v. Savidge, — Wash. —, 175 Pacific 568, p. 569.

MINERS' LIENS.

STATEMENT OF CLAIM—ESSENTIAL ELEMENT—MANUAL LABOR.

The California amendatory act of 1911 (p. 1313) gives persons who perform labor in any mining claim a lien for the value of the labor done. The statute provides that the superintendent shall be considered the agent of the owner for the purposes of that act. This is the only statute on the subject of liens applicable to an oil well. The provisions of this act are to be liberally construed with a view of protecting and promoting the legitimate interests of the laborer; but there must be a substantial compliance with the requirements of the law in order to enforce the remedy against the property. A total omission of the essential element of a lien, the performance of manual labor, renders the claim too fragile to support any judgment foreclosing the lien.

McCreary v. Toronto Midway Oil Co., — Cal. App. —, 175 Pacific 87.

CLAIM FOR SALARY—SUFFICIENCY.

Under the California statute a claim for a lien against an oil well by an employee of the oil company is insufficient where it merely states that the claimant had been employed by the oil company for a certain stated time, and is still employed and that no part of his salary had been paid since a certain stated date and that during such time he has been employed as superintendent of the oil operations of the oil company named.

McCreary v. Toronto Midway Oil Co., — Cal. App. —, 175 Pacific 87.

SUPERINTENDENT OF OIL COMPANY—RIGHT TO LIEN.

The statute of California of 1911 (p. 1313), gives persons who perform labor in any mining claim a lien for the value of the labor done. The statute makes the superintendent the agent of the owner for the purposes of the act, and there is no other statute expressly giving a right to a mechanic's lien upon an oil well, and this statute limits the lien to the value of the labor done. Under this statute the claim of the superintendent of an oil company for unpaid salary as superintendent of the oil operations can not be enforced. The claim of a superintendent as such is not subject to lien since it does not come within the purview of the statute.

McCreary v. Toronto Midway Oil Co., — Cal. App. —, 175 Pacific 87.

See Durheimer v. Copperopolis Copper Co., 55 Oreg. 57, 104 Pacific 895.

ESTATE SUBJECT TO LIEN.

The statute of Idaho (Revised Code, sec. 5110) gives a person who performs labor in any mine a lien upon the same for the work whether done at the instance of the owner or his agent; but the lessee of a mining claim shall not be considered as the agent of the owner. Under this statute the interest given to the optionee in a contract to purchase a mine coupled with the right of possession under certain conditions is not lienable for work done at the instance of a tenant of such optionee, unless the optionee himself caused the work to be done or made the tenant his agent within the meaning of the statute. But to do either would require some general act or arrangement over and above the mere granting possession of the premises upon condition that the lessee would occupy and use the same for certain purposes and under certain rights and privileges at his own expense and return to the owner a portion of the profits.

Nicholson v. Smith, — Idaho, —, 174 Pacific 1008.

See Black v. Murray, 12 Mont. 545, 31 Pac. 550.

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MINING CLAIMS.

NATURE AND GENERAL FEATURES.

VALIDITY OF CLAIM—UNITED STATES AND STATE STATUTES.

If a mining location or claim is invalid under the United States mining statutes it is also invalid under the State statutes.

Nelson v. Smith, — Nev. —, 176 Pacific 261, p. 263.

RIGHT OF LOCATION—PRIVILEGE AND POSSESSION.

The right of a locator upon mineral lands of the United States is a privilege granted by Congress, but it can only be exercised within the limits of the prescribed grant, and if there is not a valid location there can be no possession under it.

Nelson v. Smith, — Nev. —, 176 Pacific 261, p. 265.

MINERAL CHARACTER OF LAND.

SURVEY—NOTATION AS TO MINERALS.

An official township survey with a notation that "there is some indication of mineral in this township," does not classify the particular tract as mineral in character, and they stand as *prima facie* non-mineral; but this is a presumption easily rebuttable, and the burden of proof is upon the person claiming it to be mineral.

Deer Creek Min. & Milling Co. v. Paris, 46 Land Decisions 268, p. 271.

ENTRY UNDER HOMESTEAD LAW.

An entry of land under the homestead law creates a vested interest and prevents any appropriation under the mining statutes unless the land in such homestead entry is shown to be of known mineral character before the issuance of the final certificate.

Deer Creek Min. & Milling Co. v. Paris, 45 Land Decisions 268, p. 272.

LOCATION OF CLAIM.

DIMENSIONS—LENGTH.

The United States statutes provide that a mining claim may equal but can not exceed 1,500 feet in length along the vein or lode.

Nelson v. Smith, —, Nev. —, 176 Pacific 261, p. 263.

LOCATION MUST EMBRACE DISCOVERY POINT.

The location of a lode mining claim based on discovery of a vein may be laid on a strip of open unappropriated, unsegregated public land 600 feet wide and 1,500 feet long in any direction along the supposed strike of the vein, if the strip embraces the point of discovery equidistant from the side lines.

Deer Creek Min. & Milling Co. v. Paris, 46 Land Decisions 268, p. 272.

MARKING LOCATION ON GROUND—LEGAL SUBDIVISIONS.

The statute of Washington (amendatory act of 1917, p. 599), authorizes any citizen finding precious minerals upon any of the State lands to apply to the commissioner of public lands for a lease of any amount not exceeding 80 acres for prospecting purposes, but requires the application to be made by legal subdivisions according to the public land surveys. The statute prior to this amendatory act required the applicant to post the usual location notice, set corner posts, and mark the boundaries as required by the United States mining statutes. The amendatory act requiring an application "by legal subdivisions according to the public land surveys" is in lieu of the location notice and the marking of the boundaries, and an applicant under this amendatory act is not required to show a location notice or the markings of the boundaries.

State v. Savidge, — Wash. —, 175 Pacific 568, p. 569.

INITIATING RIGHTS—ENTRY UPON EXISTING CLAIM.

Any competent locator has the right to initiate a lawful mining claim to unoccupied public land by a peaceful adverse entry upon it while it is in the possession of those who have no superior right to acquire title or hold possession.

Nelson v. Smith, — Nev. —, 176 Pacific 261, p. 264.

LOCATION ON EXCESS GROUND—KNOWLEDGE OF EXISTING CLAIM.

Where disputed ground of the public domain was open to location at the time a locator initiated his claim, it is immaterial to the validity of the location made that the locator knew of the boundaries of an existing claim or that the situs of such existing claim was known to the locator.

Nelson v. Smith, — Nev. —, 176 Pacific 261, p. 264.

See Walsh v. Henry, 38 Colo. 393, 88 Pacific 450.

Brown v. Oregon King Min. Co., 110 Federal 728.

EXCESSIVE LOCATION.

Where a mining location is excessive in length, if the error is innocently made, the claim is valid but the excess is void.

Nelson v. Smith, — Nev. —, 176 Pacific 261, p. 265.

NONMINERAL LAND INCLUDED.

The boundaries of a mining claim may include open nonmineral land as well as mineral land.

Deer Creek Min. & Milling Co. v. Paris, 45 Land Decisions 268, p. 272.

MARKING LOCATION.**OBJECT OF REQUIREMENT.**

The object of the law in requiring a mining location to be distinctly marked on the ground so that its boundaries can be traced is a requirement admittedly designed to prevent the floating or swinging of claims.

Nelson v. Smith, — Nev. —, 176 Pacific 261, p. 264.

See United States Mining Statutes Annotated, 216.

MARKING—BOUNDARIES TRACEABLE.

The United States mining statutes require that a mining location must be distinctly marked on the ground so that its boundaries can be readily traced.

Nelson v. Smith, — Nev. —, 176 Pacific 261, p. 263.

See United States Mining Statutes Annotated, 218, 220.

BOUNDARIES OUTSIDE OF AUTHORIZED LIMITS—NOTICE.

With the discovery as the initial point the boundaries of a mining location must be so definite and certain that they can be readily traced and they must be within the limits authorized by law, as otherwise their purpose and object will be defeated. The area bounded by a location must be within the limits of the grant, and no one would be required to look outside such limits for the boundaries of a location. Boundaries beyond the maximum extent of a mining location would not impart notice and would be equivalent to no boundaries at all.

Nelson v. Smith, — Nev. —, 176 Pacific 261, p. 263.

See Hauswirth v. Butcher, 4 Mont. 299, 1 Pacific 714.

Leggatt v. Stewart, 5 Mont. 107, 2 Pacific 320.

United States Mining Statutes Annotated, 91.

DISCOVERY.**LANDS VALUABLE FOR MINERALS.**

A valid mining location can be made only on lands some part of which are shown by a discovery to be valuable for minerals.

Deer Creek Min. & Milling Co. v. Paris, 46 Land Decisions 268, p. 272.

LOCATION OF DISCOVERY POINT.

The point of discovery of mineral may be anywhere within the strip of land appropriated without reference to the end lines, but it must be equidistant from the side lines.

Deer Creek Min. & Milling Co. v. Paris, 45 Land Decisions 268, p. 272.

ABANDONMENT.

ABANDONMENT BY PART OWNER—RELOCATION BY PART OWNER.

The locators of a mining claim sold and conveyed an interest therein to one person and the remaining interest to a corporation. Subsequently the corporation became defunct and abandoned all claim to the property. The other part owner did not abandon or otherwise dispose of his rights and subsequently together with other persons relocated the entire claim and performed all the annual assessment work. Such facts are sufficient to show ownership of the claim in the relocators.

Oroville International Salts Co. v. Rayburne, — Wash. — 176 Pacific 14, p. 15.

RELOCATION.

VALIDITY OF ORIGINAL LOCATION—ADMISSION.

The locator of a mining claim by claiming a relocation of an existing claim thereby admits the validity of the original location.

Betsch v. Umphrey, 252 Federal 573, p. 574.

POSSESSORY RIGHTS.

VALID LOCATION AS BASIS.

The right to the possession of a mining claim comes only from a valid location, and if there is not a valid location there can be no possession under it. A mining location does not necessarily follow from possession, but possession follows from location.

Nelson v. Smith, — Nev. —, 176 Pacific 261, p. 265.

DETERMINATION UNDER ACT OF CONGRESS.

The rights of parties to the possession of a mining claim must primarily be determined by the rules of law governing the right of possession of mining claims under the United States statutes.

Nelson v. Smith, — Nev. —, 176 Pacific 261, p. 263.

POSSESSION UNDER VALID LOCATION—PRIMA FACIE CASE.

A relocater of a mining claim in an action for possession against a successor to the original locator admitted the validity of the original location, and by setting forth an affidavit of the assessment work done by such successor of the original locator identified such assessment work and the possession of the successor of the original locator with the original location and thereby admitted his possession during the year that such assessment work was performed. The possession so admitted is presumed to have continued until shown to have been discontinued. The showing by the relocater that the successor of the original locator was in the quiet and undisputed possession of the premises during the year of the performance of the assessment work and under a valid location constitutes a prima facie case that can be overcome only by proof of abandonment or forfeiture and the acquisition of a better right or title by the relocater.

Betsch v. Umphrey, 252 Federal 573, p. 574.

POSSESSORY TITLE AND CONTROL.

A valid mineral location gives the locator possessory title to and control of the superficial area of the land within its boundaries so long as he complies with the statutes governing mining locations.

Deer Creek Min. & Milling Co. v. Paris, 45 Land Decisions 268, p. 272.

CONFLICT BETWEEN HOMESTEAD AND MINING LOCATION—SUPERIOR RIGHTS.

A homestead entry was duly made on public lands. Subsequently a prospector discovered minerals and located a mining claim that extended in part upon and over the prior homestead entry. The point of discovery of the mineral location was outside of the limits of the homestead tract. Under these facts the right of the homestead entryman is superior to that of the mineral locator where the proof failed to show that the mineral vein extended into the homestead tract and where it failed to show that the area in conflict was in fact mineral in character.

Deer Creek Min. & Milling Co. v. Paris, 45 Land Decisions 268, p. 274.

POSSESSORY ACTIONS.**ACTION TO QUIET TITLE—PLEADING—JUDGMENT ON PLEADINGS.**

A defendant in an action to quiet title to a mining claim alleged in his answer that he was the owner in fee of the ground in controversy. A judgment could not be rendered upon the pleadings in such case on the ground that the answer did not allege that the

defendant was the owner of the ground in controversy at the time of the commencement of the action and that the answer in fact admitted the averments of the complaint. It was the evident intent of the defendant to allege his title as of the date of the commencement of the suit. To justify a judgment on the pleadings, the pleading must be clearly bad and if there is any reasonable doubt as to its sufficiency such a judgment will not be rendered.

Betsch v. Umphrey, 252 Federal 573, p. 574.

ACTION TO QUIET TITLE—UNDIVIDED INTEREST—ESTOPPEL.

A person can not maintain an action to quiet his title to an undivided interest in a mining claim where it is shown that such person at the time he received and accepted a deed for such undivided interest knew that the grantor had prior thereto conveyed by deed his entire interest in the premises to a third person and with full knowledge of such fact accepted from such grantor one-half of the proceeds of the sale of the claim.

Moore v. Rochester Weaver Min. Co., — Nevada —, 174 Pacific 1017, p. 1021.

EJECTMENT—RECOVERY—PREVAILING RIGHT.

In possessory actions to recover unpatented mining claims, the ordinary rule in actions of ejectment to the effect that the plaintiff must recover on the strength of his own title and not on the weakness of his adversary's title does not apply. The rule is that in possessory actions for mining claims the better title prevails.

Oroville International Salts Co. v. Rayburne, — Wash. —, 176 Pacific 14, p. 15.

JURY TRIAL.

A cross complaint in an action involving the rights to a mining claim alleged a right of possession in the cross complainants and that they had been wrongfully deprived of such possession by the plaintiff. Under these allegations the cross complainants were entitled to a jury trial.

Oroville International Salts Co. v. Rayburne, — Wash. —, 176 Pacific 14, p. 15.

DESCRIPTION.

DESCRIPTION OF CLAIM—INTEREST CONVEYED.

The description of a mining claim in the granting clause of a conveyance was as follows: "1700 feet on the Chatauqua lode and also 100 feet on said Shelaw lode and also all the real estate of the grantor acquired and which may be acquired in a certain named county whether the same is particularly described herein or otherwise." The rule is that the general description prevails over a particular descrip-

tion where there is a clear intent to have the general description control. The grantor owned the entire 3,000 feet of the Chatauqua lode and by the conveyance there is a clear intent to have the general description control, and that intent should be given effect and the grantee receive a good and merchantable title to the entire 3,000 feet.

Sutton, Steele, etc., *Min. Co. v. McCulloch*, — Colo., — 174 Pacific 303, p. 304.

PLACER CLAIMS.

JOINT OWNERS—AUTHORITY OF ONE COOWNER.

One of several coowners of a placer claim can not bind the other coowners by giving a third person the privilege of going upon a part of the joint claim to make a location, or to make a location of a supposed excess in such placer claim, and an attempted location made under such circumstances is invalid as against the other coowners of the placer claim.

Adams v. Yukon Gold Co., 251 Federal 226, p. 229.

EXCESSIVE LOCATION—EFFECT—TRESPASS.

A location of a placer claim made in good faith by mistake containing an excessive area is not wholly void but is invalid only as to the excess. The claim owner may reject such portion of the excess as he may select, and until he is advised that there is an excess and has had a reasonable time in which to make his selection, his possession extends to the entire claim, and another person who goes upon it and attempts to make a location becomes a trespasser, and such attempted location is void for all purposes.

Adams v. Yukon Gold Co., 251 Federal 226, p. 228.

EXCESSIVE LOCATION—NOTICE TO OWNER OF EXCESS.

The coowners of a placer mining claim are entitled to the possession of the entire claim and if there is an excess to be advised of the fact to the end that they may within a reasonable time make a selection of what ground they intended to preserve as to their true claim. This right of possession is a valuable right and in the absence of a showing of substantial effort to give notice to all the coowners of record, notice to a part only is not a compliance with the spirit of the mining laws, which in their liberality have preserved the right of selection in case of an excessive location.

Adams v. Yukon Gold Co., 251 Federal 226, p. 229.

PATENTS.**APPLICATION FOR PATENT—JURISDICTION OF COURT PENDING PROCEEDINGS.**

When an application for a patent for oil lands has been begun in the Land Office and countercharges of fraud have been made by the Government and are under investigation, pending action upon the application for patent, a court has no jurisdiction to determine the rights of the claimants in possession of the land as against the United States.

Devil's Den Consolidated Oil Co. v. United States, 251 Federal 548, p. 554.

DISMISSAL—APPLICATION—HARMLESS ERROR.

It may be conceded that the Land Department is without jurisdiction to order the cancellation of a mining location on an application for a patent; but the determination by the Land Department of the fact that the ground applied for was not mineral land in effect destroys every step taken by an applicant under the mining laws, and necessarily includes his mining location.

Cameron v. United States, 250 Federal 943, p. 946.

See *Cameron v. Bass*, — *Ariz.*—, 158 Pacific 648.

OIL LOCATIONS.**APPLICATION FOR PATENT—JURISDICTION OF COURTS.**

Where an application for a patent for oil claims has been made and is pending, and the right of the claimant to a patent has been challenged in the Land Department on the ground of fraud, a local court has no jurisdiction to entertain a suit on behalf of the United States to quiet title to the land embraced in such location and to appoint a receiver to take charge of the property as belonging to the United States.

Devil's Den Consolidated Oil Co. v. United States, 251 Federal 548, p. 554.

TRESPASS.**ATTEMPTED RELOCATION OF EXISTING CLAIM.**

A person who enters upon a mining claim owned by several joint owners with the consent of one of such joint owners, for the purpose of relocating any part of such existing claim is a trespasser, and can not initiate any valid rights, although the original location was excessive, but no notice had been given the joint owners of such excess and no opportunity afforded to exclude any part of the claim because excessive.

Adams v. Yukon Gold Co., 251 Federal 226, p. 229.

SALE AND TRANSFER.

OPTION CONTRACT TO PURCHASE—POSSESSION.

An agreement by which the grantee was to have the privilege of purchasing a mining claim and was given the right to occupy and work the same under certain conditions is not a contract of purchase and sale, but an option to buy the claim coupled with the right of possession under certain conditions.

Nicholson v. Smith, — Idaho —, 174 Pacific 1008.

See Smith v. Beebe, — Idaho —, 174 Pacific 608.

OPTION CONTRACT OF SALE—EXPIRATION—RIGHTS OF PARTIES.

The owner of certain mining claims executed an option contract for the sale thereof to a prospective purchaser. The optionee proposed to operate the claims and to place thereon and therein certain fixtures. The option agreement provided that all such buildings, machinery, cars, rails, tools, and supplies, placed upon the property should become fixtures thereon, and a part thereof, and provided that if the option was not taken up, the machinery and fixtures should remain and become a part of the premises. The failure of the optionee to comply with the terms of the agreement and to meet the payments in the manner specified did not render the contract void. By his failure so to do his rights under the contract expired and the rights of the seller to repossess himself of the property and of the fixtures and machinery placed thereon accrued, and such fixtures and machinery as were placed upon the premises became the property of the original owner and seller.

Smith v. Beebe, — Idaho —, 174 Pacific 608, p. 610.

FRAUD—GRANTOR AS TRUSTEE.

An optionee held an option contract for the purchase of a certain mine at the fixed price of \$11,000. He induced a mining company to purchase the mine for \$15,000 and represented that that was the sum he had paid for the mine. The optionee had a secret agreement with the owner of the mine by which he should retain \$4,000, the difference between the \$11,000 he was to pay and the \$15,000 for which he was selling the mine. The optionee under an arrangement with the mine owner and the purchaser took the title to the mine in his own name. Under such circumstances the original optionee, holding the title of the property, became the trustee of the purchaser and held the property in trust and under the facts could be compelled to transfer the property to the purchasing company.

Hope v. Berger Min. Co., — Cal. App. —, 174 Pacific 932, p. 933.

STATUTES RELATING TO MINING OPERATIONS.

CONSTRUCTION, VALIDITY AND EFFECT.

WORDS OMITTED FROM ENROLLED BILL—INSERTED IN PRINTED ACT.

The words included in brackets in section 2, act 175 (Acts of 1913) of Arkansas, were inadvertently omitted from the enrolled bill by the enrolling clerk, but they were in the original act on file in the office of the secretary of state, and were properly inserted in the published act by the secretary of state. With these words included, the act applies to all injuries inflicted by a corporation and is not confined to injuries in death cases only.

Athletic Min. & Smelting Co. v. Sharp, — Ark. —, 205 Southwestern 695, p. 697.

See Monetaire v. Columbus Rexall Consolidated Mines Co., — Utah —, 174 Pacific 172, p. 175.

CALIFORNIA MINERS' WAGES ACTS—VALIDITY AND CONSTRUCTION.

Section 3 of the California act of May 1, 1911, made any violation of the act a misdemeanor and imposed a fine upon conviction of not to exceed \$500. This section was held unconstitutional. The act of August 8, 1915, provides a substitute for section 3 of the original act to the effect that where an employer fails to pay an employee within five days after his wages become due, the wages of an employee who is discharged or who quits work, as a penalty for such nonpayment shall continue at the same rate until paid, not exceeding 30 days.

Moore v. Indian Spring Channel Gold Min. Co., — Cal. App. —, 174 Pacific 378, p. 379.

See Crane, Matter of, 26 Cal. App. 22, 145 Pacific 733.

Commonwealth v. Reinecke Coal Min. Co., 117 Ky. 888, 79 Southwestern 287.

DIFFERENCE IN STATUTES AS TO PAYMENT OF WAGES.

The difference between the act of 1911 and the act of 1915 in relation to the payment of wages is that the act of 1911 declared a violation of its provisions to be a crime for which the violator was answerable to the State, but by the amendatory act of 1915 the employer must compensate the wage earner by way of penalty and the criminal provision is eliminated. This provision as to the penalty is not unlike in its operation the statute which authorizes a court to impose treble damages under certain circumstances and which is held to

be remedial and not penal. This amendatory act falls within the police powers of the State and is constitutional and valid.

Moore v. Indian Spring Channel Gold Min. Co., — Cal. App. —, 174 Pacific 378, p. 379.

See *Crane*, Matter of, 26 Cal. App. 22, 145 Pacific 733.

Commonwealth v. Reinecke Coal Min. Co., 117 Ky. 888, 79 Southwestern 287.

EMINENT DOMAIN—LIBERAL CONSTRUCTION OF STATUTE.

A statute giving the right of eminent domain for a particular purpose must be given a liberal construction in furtherance of that purpose. This rule of liberal construction is applied to the statute of Utah which grants the right of eminent domain for the purpose of developing the mining industry and for the purpose of developing the mineral resources of the State, regardless of ownership.

Monetaire v. Columbus Rexall Consolidated Mines Co., — Utah —, 174 Pacific 172, p. 175.

STATUTE CHANGING THE RULE OF DAMAGES FOR TRESPASS—CONSTRUCTION.

The statute of Maryland (Code, art. 75, sec. 92) provides that in the absence of fraud, negligence, or wilful trespass the measure of damages for wrongful mining of minerals or coal is the value of the minerals or coal in the native state. It also provides that if a person furtively or in bad faith mines coal or minerals from the land of another he may be charged with the whole value of the coal or minerals taken and allowed no deduction in respect of his labor and expenses in getting them. It was for the legislature to determine the wisdom of this legislation, but, as it is contrary to a rule established after most thorough consideration and is liable to encourage trespass if not properly guarded it should not be extended beyond what was clearly the intention of the legislature.

Mt. Savage George's Creek Coal Co. v. Monahan, — Md. —, 104 Atlantic 480, p. 485.

FENCING ABANDONED SHAFTS—POLICE REGULATION.

The statute of Oklahoma requiring fences and danger signals at mine entrances where mining operations have been suspended is a police regulation enacted for the benefit of the public in general.

Whitehead Coal Min. Co. v. Pinkston, — Okla. —, 175 Pacific 365, p. 366.

DUTIES IMPOSED ON OPERATOR.

STATUTORY DUTY TO FURNISH SAFE PLACE—VENTILATION.

The statute of Iowa (Code Suppl., 1913, sec. 2488) requires a mine operator to provide and maintain an amount of ventilation of not less than 100 cubic feet of air per minute for each person employed in

the mine and requires that the air shall be so circulated throughout the mine as to dilute and render harmless and expel all noxious and poisonous gases in the working parts of the mine. When the air in a mine has become charged with poisonous gas to an extent to materially injure a miner while employed therein, then the coal-mine operator has failed in his duty to so ventilate the working place as to render it harmless and he becomes liable for any consequent injury.

Gay v. Hocking Coal Co., — Iowa, —, 169 Northwestern 360, p. 362.

DUTY TO FURNISH SAFE PLACE.

The responsibility of a mining company operating a mine to give warning when blasts are to be fired arises under the general law requiring all employers to use ordinary care to furnish a reasonably safe place in which their employees are required to work.

United Verde Copper Co. v. Kuchn, 253 Federal 425, p. 426.

FAILURE TO VENTILATE MINE—LIABILITY FOR OCCUPATIONAL DISEASE.

A coal-mine operator who has refused to accept the terms of the workmen's compensation act is subject to other existing statutes that require a coal-mine operator to provide and maintain a specified amount of ventilation in his mine. The operator having rejected the provisions of the workmen's compensation act can not deny his liability for an occupational disease resulting from his violation of the statute in failing to provide the required ventilation on the ground that liability for occupational disease exists under the workmen's compensation act. A mine operator after rejecting the workmen's compensation act can not have the advantage or benefit of any of its provisions to limit or restrict his liability to respond in damages.

Gay v. Hocking Coal Co., — Iowa —, 196 Northwestern 360, p. 363.

SUSPENSIONS OF OPERATIONS—WARNING—DUTY.

The statute of Oklahoma provides that when mining operations are suspended the superintendent and mine foreman shall see that a danger signal is placed at the mine entrance and the entrance securely fenced off and a danger signal displayed. Under this statutory provision a mine operator owes a duty to all persons coming upon the premises by invitation to fence an entry to the mine and place warning signals of danger upon such fence, and failing to do so it is liable for resulting injuries.

Whitehead Coal Min. Co. v. Pinkston, — Okla. —, 175 Pacific 365, p. 366.

VIOLATION BY OPERATOR.**SHOT FIRING—FAILURE TO GIVE WARNING.**

The revised statutes of Arizona (acts 1913, and Civil Code, p. 1365) provide that before firing charges in a mine, warning must be given in every direction from which access may be had to the place of blasting. There are no words in the statute designating the mining company or a mine operator as the person on whom the duty to give the warning falls. If the statute fails directly to place the duty to give the warning upon the mining company, nevertheless the State constitution makes the mine operator responsible for the neglect of such duty, and the same result is reached.

United Verde Copper Co. v. Kuchn. 253 Federal 425. p. 426.

FAILURE TO PERFORM STATUTORY DUTY—NEGLIGENCE PER SE.

The failure of a mine operator to perform a statutory duty imposed by a valid statute under the police power of the State for the protection of the public is negligence per se.

Whitehead Coal Min. Co. v. Pinkston, — Okla. —, 175 Pacific 365, p. 367.

FAILURE TO VENTILATE—NEGLIGENCE PER SE.

The statute of Iowa (Code Suppl., 1913, sec. 2488) places upon a mine operator the duty of ventilation and expressly states the extent of the ventilation required, and before a mine operator has discharged his duty, regardless of the contrivances employed or of the amount of ventilation, the gases in his mine must be rendered harmless by being diluted or expelled. A mine operator violating this statute is a wrongdoer and is ex necessitate negligent in the eyes of the law, and a miner within the protection of the statute injured by reason of such violation is entitled to recover damages.

Gay v. Hocking Coal Co., — Iowa —, 169 Northwestern 360, p. 362.

See Mosgrove v. Zibelman, 110 Iowa 172, 81 Northwestern 228.

FAILURE TO VENTILATE—INJURIES FROM IMPURE AIR—PLEADING AND PROOF.

A complaint in an action by a miner averred that the injuries complained of were due to impure air in the mine, such as is commonly termed in mining "bad air." Under these averments the proof and the plaintiff's right to recover are not to be limited to any particular kind of poisonous gases, but the charge is broad enough to entitle him to recover on proof that he was injured by the presence in the mine of noxious gases of any kind.

Gay v. Hocking Coal Co., — Iowa —, 169 Northwestern 360, p. 364.

FAILURE TO VENTILATE—OCCUPATIONAL DISEASE—LIABILITY.

A coal-mine operator is liable in damages to a miner contracting an occupational disease resulting from the failure of the mine operator to ventilate the mine as required by the statute. A wrongful injury which destroys or impairs the health of a miner is no less actionable than a wrong from which the miner sustains a bodily injury.

Gay v. Hocking Coal Co., — Iowa —, 169 Northwestern 360, p. 363.

ACTION FOR INJURIES—PLEADING—PROXIMATE CAUSE.

In an action by a miner for damages for disability resulting from what is termed "occupational disease" the plaintiff, in order to make a prima facie case, was not bound to plead or prove that he was not suffering from an occupational or other variety of disease except as such negation may be implied from proof that the injury complained of was the proximate result of the mine operator's failure to perform his statutory duty in the matter of the ventilation of the mine. If the mine operator failed to perform the statutory duty in respect to the ventilation of the mine, and if the complainant was thereby physically overcome or disabled to a degree causing him to suffer injury or loss, the mine operator's liability is not avoided or lessened by reason of the fact that the miner sustained no wound or bruise or other hurt of a traumatic character or origin.

Gay v. Hocking Coal Co., — Iowa —, 169 Northwestern 360, p. 363.

DUTIES IMPOSED ON MINE FOREMAN.

DANGEROUS PLACE—REPORT BY MINER—DUTY OF FOREMAN.

A miner on discovering a dangerous condition in his working place that could not be remedied or made safe by the use of props and timbers, immediately reported such dangerous condition to the mine foreman, as required by the Virginia statute. The foreman advised the miner that he would have the dangerous slate removed. After the slatemen had taken down the slate they thought was dangerous and fixed the place in working shape, the miner returned to his work and was injured by a fall of slate from the roof immediately behind him and from the place where the slatemen had removed some slate or rock. The determination by the mine foreman that the miner's working place did not require props but that the loose slate and rock should be taken down, and ordered the same done, was binding upon the mine operator, and the operator was liable for the negligence of the foreman in failing to have the miner's working place made safe.

Jewel Ridge Coal Corp. v. Keen, — Va. —, 96 Southeastern 767, p. 768.

VICE PRINCIPALS.**STATUTORY CREATION—NEGLIGENCE—LIABILITY.**

The statute of Virginia (Acts 1912, p. 427, sec. 29) makes a mine foreman, boss, or fire boss and their assistants, when acting for a mine owner or operator, his vice principals. Under this statute negligence of slatemen directed by a mine foreman to take down and remove slate and to make a miner's working place safe is the negligence of a vice principal for which the mine operator is liable.

Jewel Ridge Coal Corp. v. Keen, — Va. —, 96 Southeastern 767, p. 768.

DUTIES IMPOSED ON MINER.**DUTY TO INSPECT.**

The statute of Alabama (General Acts 1911, p. 513) provides that every workman employed in a mine shall examine his working place before beginning work, and after any stoppage of the work during a shift he shall repeat the examination. It is also made the duty of all miners to promptly inform the mine foreman or his assistant of any unsafe condition in his working place. This statute puts upon every miner the duty to exercise care to know the condition of his working place. The purpose of the statute is to put upon the miner the burden of examining for himself the places and conditions in his working place from which danger may be expected, and this includes the roof of the mine.

Seagle v. Stith Coal Co., — Ala. —, 79 Southern 301, p. 303.

FAILURE TO INSPECT WORKING PLACE—DANGEROUS APPEARANCE.

The statute of Alabama (General Acts 1911, p. 513) imposes upon every miner the duty of examining his working place and to report any unsafe conditions to the mine foreman or his assistant. If a miner by the exercise of that caution imposed upon him by the statute would have discovered the dangerous condition in the roof of the mine at his working place and nevertheless went under it and was injured, he can not recover. In such case the omission of the miner was negligence per se and was the proximate legal cause of his injury.

Seagle v. Stith Coal Co., — Ala. —, 79 Southern 301, p. 303.

See Woodward Iron Co. v. Wade, 192 Ala. 651, 68 Southern 1008.

DUTY OF MINER TO PROP WORKING PLACE—EXCEPTIONS.

The statute of Virginia (Acts 1912, p. 427) makes it the duty of each miner to prop and secure his mining place and prohibits a miner from working unless he has props and timbers sufficient to make his place secure. But this provision does not apply to a case where the threatened danger was not of such a character as to call for the use

of props and where the miner pursuant to another provision of the statute was required to report the dangerous condition to the mine foreman.

Jewel Ridge Coal Corp. v. Keen, — Va. —, 96 Southeastern 767, p. 768.

RIGHT TO STATUTORY PROTECTION.

PERSONS WITHIN STATUTORY PROTECTION—PUBLIC.

The statute of Oklahoma requiring mine operators to fence the entrances to mines and erect danger signals when operations are suspended was intended for the protection of the public in general and applies to a person in the situation of an invitee or a licensee; and a failure to comply with the statute renders a mine operator liable for the death of an invitee or licensee resulting from the failure to comply with the statute.

Whitehead Coal Min. Co. v. Pinkston, — Okla. —, 175 Pacific 356, p. 366.

STATUTORY PROTECTION INVOKED BY PLEADING.

In an action by a miner for damages for injuries the complaint averred that the mine operator negligently furnished the complainant defective appliances with which to work and that the injuries complained of resulted from the use of the defective appliances. These averments are sufficient to invoke the provisions of the Indiana employers' liability act of 1911.

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 Northwestern 664, p. 667.

EMPLOYEE ON OUTSIDE TRAMWAYS.

Section 98 of the mining law of Alabama (General Acts 1911, p. 534) has no application to tramways or tram tracks that are employed outside of mines and entirely disconnected with any tramways or tram tracks in the mine.

Montevalo Min. Co. v. Underwood, — Ala. —, 79 Southern 453, p. 455.

FELLOW SERVANT RULE—DEFENSE ABROGATED.

FELLOW SERVANTS—DOCTRINE ABROGATED.

The constitution of Arizona (art. 18, sec. 4) abrogates the common law doctrine of fellow servants so far as it affects the liability of a mine operator for injuries to a miner resulting from acts or omissions of any other miner.

United Verde Copper Co. v. Kuchn, 253 Federal 425, p. 426

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LIABILITY NOT AVOIDED BY CONTRACT.

Section 36, article 9 of the constitution of the State of Oklahoma prevents a coal-mine operator from entering into a contract with a miner by the terms of which he is to relieve himself from liability for injuries resulting from the negligent or careless acts of a fellow servant of the miner.

Creek Coal Min. Co. v. Paprotta, — Okla. —, 175 Pacific 235, p. 237.

SLATEMEN NOT FELLOW SERVANTS OF MINER.

Under the statute of Virginia making mine foremen, bosses, or fire bosses, and their assistants, vice principals, slatemens ordered by a mine foreman to go to a miner's working place and take down the slate and make the place safe, are not fellow servants of the miner and their negligence in failing to make the place safe will not defeat a recovery by the miner for damages for injuries caused by such negligence.

Jewel Ridge Coal Corp. v. Keen, — Va. —, 96 Southeastern 767, p. 768.

EFFECT ON CONTRIBUTORY NEGLIGENCE.

DEFENSE.

Under the provisions of the Indiana employer's liability act of 1911, contributory negligence of an injured miner, when not affirmatively shown in the complaint, is a matter of defense.

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 Northwestern 664, p. 667.

MINER'S WORKING PLACE—SAFETY.

A miner on discovering a dangerous condition in his working place immediately reported the fact to the mine foreman, as required by the Virginia mining statute. The foreman examined the miner's working place and directed the slatemens to take down the overhanging slate and make the place safe. After completing their work, they informed the miner that the place was ready for him and he thereupon resumed his work and was injured by a fall of slate from the roof. The miner under the statute can not be charged with contributory negligence in returning and beginning work in his place after it was reported to be in proper condition by the slatemens.

Jewel Ridge Coal Corp. v. Keen, — Va. —, 96 Southeastern 767, p. 768.

See Bernes v. Gaston Coal Co., 27 W. Va. 285.

EFFECT ON ASSUMPTION OF RISK.

DEFENSE.

Under the provisions of the Indiana employers' liability act of 1911, the assumption of risk by an injured miner when not affirmatively shown in the complaint, is a matter of defense.

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 North-eastern 664, p. 667.

MINERS' WAGES.

PAYMENT COMPELLED.

The California statute of May 1, 1911 (p. 1268), and the amendment of April 28, 1915 (p. 299), requiring the payment of miners' wages once in each month imposes no unreasonable burden upon the employer as operating as it does in the future and disturbing no vested right, the employer must and it is but fair that he should make provision to pay his employee before hiring him, and failing in this, he should pay the penalty.

Moore v. Indian Spring Channel Gold Min. Co., — Cal. App. —, 174 Pacific 378, p. 381.

RECOVERY OF WAGES AND PENALTY.

The statute of May 1, 1911 (p. 1268), as amended by the act of August 8, 1915, (p. 299), applies to mine operators as employers and to miners as employees. Miners who had worked for a mine operator for several months at a daily wage received their pay at the end of the month regularly as agreed upon. The mine finally shut down and the miners were discharged and the mine operator refused to pay the last month's wages. Under the amendatory act of 1915, a discharged miner could sue and recover not only the wages due but the penalty imposed by the amendatory act.

Moore v. Indian Spring Channel Gold Min. Co., — Cal. App. —, 174 Pacific 378, p. 381.

MINER'S WAGES—EMPLOYEE QUITTING WORK—RECOVERY.

The statute of California of May 1, 1911, as amended by the act of August 8, 1915, provides that when an employee is discharged by his employer his wages earned and unpaid shall become due immediately. If the employment is not for a definite period and the employee quits his employment, the act gives the employer five days to pay the wages earned and unpaid. There is nothing unreasonable in this provision, for the right of the employee to quit work, where there is no contract for a definite period is as undeniable as the right of the employer to discharge the employee. The act does not violate any of the provisions of either the State or the Federal constitution.

Moore v. Indian Spring Channel Gold Min. Co., — Cal. App. —, 174 Pacific 378, p. 381.

WRONGFUL DEATH.**SURVIVAL OF ACTION.**

The cause of action for pain, suffering, and medical expenses arising from a wrongful injury survives under the statute (Rev. Laws, 1910, sec. 5281) to the personal representative when the injury results in the death of an employee, and the recovery becomes a part of his estate and is subject to the claims of creditors.

Lahoma Oil Co. v. State Industrial Commission, — Okla. —, 175 Pacific 836, p. 837.

BENEFICIARIES—RIGHT TO SUE—PLEADING.

In an action for damages for a wrongful death the complaint is sufficient to show a reasonable expectancy on the part of the father for continued support on behalf of the deceased and that he sustained a loss by reason of the death where it averred that the deceased was earning \$50 a month and was living with his father and spending his earnings in the support of his father and sister.

Whitehead Coal Min. Co. v. Pinkston, — Okla. —, 175 Pacific 365, p. 367.
See McGarvie v. Frontenac Coal Co., — Kans. —, 175 Pacific 375.

EFFECT OF WORKMEN'S COMPENSATION ACT.

By the terms of the workmen's compensation act of Oklahoma the amount of compensation for each injury is limited and based upon the amount of the weekly wage. The provision excepting injuries resulting in death was doubtless incorporated so as to make the act in harmony with the constitutional provision under which the amount recoverable can not be limited if death results from an injury. The death of an injured employee terminates his relation with the employer and the occasion for making compensation in lieu of wages comes to an end and the the workmen's compensations act has nothing to do with the statutory right of action for wrongful death.

Lahoma Oil Co. v. State Industrial Commission, — Okla. —, 175 Pacific 836, p. 837.

RECOVERY UNLIMITED.

The constitution of Oklahoma (art. 23, sec. 7) provides that the right of action to recover damages for injuries resulting in death shall never be abrogated and the amount recoverable shall not be subject to any statutory limitation. Because of this constitutional provision the workmen's compensation act of Oklahoma does not control or otherwise affect a right of action for wrongful death.

Lahoma Oil Co. v. State Industrial Commission, — Okla. —, 175 Pacific 836, p. 837.

DEPENDENCY—PROOF INSUFFICIENT.

Where it appeared in an action by the father and mother as beneficiaries for damages for the death of a son who was a coal miner, the evidence was insufficient to show a partial dependency where there was no contribution to the support of the parents and where both admitted that they did not know whether the mother's receipt of money from the son over exceeded a fair estimate for his board and lodging.

McGarvie v. Frontenac Coal Co., — Kans. —, 175 Pacific 375, p. 376.

SUIT IN FOREIGN STATE.

The statute of Massachusetts gives a right of action in favor of the widow and children or the next of kin of a person killed by the wrongful act of another. A citizen of New York was killed in Massachusetts by the agents of the Standard Oil Company. The administrator of the decedent may sue and maintain an action in the courts of New York under the Massachusetts statute and recover for the benefit of the next of kin.

Loucks v. Standard Oil Co., — N. Y. —, 120 Northeastern 198.

STATUTE OF FOREIGN STATE—ENFORCING IN DOMESTIC COURT.

The statute of Massachusetts as amended by the laws of 1907 (Ch. 375) makes a person or corporation causing the death of another liable in damages in a sum of not less than \$500 nor more than \$10,000 for the use of the widow and children, or of the next of kin, of the deceased. This statute is not penal in an international sense. An offender is punished, but the purpose of the punishment is reparation to those aggrieved by his offense. The damages may be compensatory or punitive according to the statutory scheme, but in either case the complainants have a grievance above and beyond any that belongs to them as members of the body politic in that they sue to redress an outrage peculiar to themselves. The statute is penal in one element only in that the damages are punitive, but the punishment of the wrongdoer is not designed as an atonement for a crime, but it is the solace to the individual who has suffered a private loss. The executor or administrator who sues under this statute is not the champion of the peace, order, and justice of the Commonwealth of Massachusetts, but he is the representative of the outraged family and vindicates a private right. The statute may be enforced in an action in the courts of New York.

Loucks v. Standard Oil Co., — N. Y. —, 120 Northeastern 198.

EMPLOYERS' LIABILITY ACT.**CONSTITUTIONALITY.**

The first employers' liability act of West Virginia was held unconstitutional because extended to cover all work done by employees of an interstate character, a large part of which work could not be upon interstate commerce or directly in furtherance thereof. The present liability act (Code, sec. 708) eliminated that difficulty and is constitutional.

Suttle v. Hope Nat. Gas Co., — W. Va. —, 97 Southeastern 429, p. 432.

See First Employers' Liability Cases, 207 United States 463, 28 Supreme Ct. Rep. 141.

Second Employers' Liability Cases, 223 United States 1, 32 Supreme Ct. Rep. 169.

CONSTRUCTION—ACCIDENTS WITHIN 30 DAYS—APPLICATION.

Subsection 3 of act No. 20 of 1914, the Louisiana workmen's compensation act, declares that every contract of hiring made subsequent to the time provided for the act to take effect between an employer and employee in all hazardous employments shall be presumed to have been made subject to the provisions of the act, unless there be as a part of the contract, an express statement in writing, not less than 30 days prior to the accident, either in the contract itself or by written notice by either party to the other that the provisions of the act are not intended to apply; and in the absence of such an agreement it shall be presumed that the parties have elected to be subject to the provisions of the act. Under this provision an accident occurring within 30 days after a contract of employment in the absence of the agreement required is within the provisions of the employers' liability act.

Philps v. Guy Drilling Co., 143 La. —, 79 Southern 549, p. 550.

Overruling, *Woodruff v. Producers' Oil Co.*, 142 La. —, 76 Southern 803.

CONSTRUCTION—RECOVERY BY DEPENDENT—APPLICATION OF ACT.

The mother of a deceased son, whose death was caused by an oil drilling company, brought an action against the drilling company for damages for tort, or in the alternative for compensation under the employers' liability act of Louisiana for the death of the son. The evidence showed that the accident resulting in the death occurred within the 30 days after the employment, that there was no agreement between the employer and employee that the act should not apply. Under the facts shown the right to compensation was within the Louisiana act No. 20, 1914, and a judgment refusing a demand for damages for the tort was properly entered.

Philps v. Guy Drilling Co., 143 La. —, 79 Southern 549, p. 552.

EXCLUSIVENESS OF REMEDY.

Section 34 of the workmen's compensation act of Louisiana (act No. 20, 1914) declares that the rights and remedies granted an employee on account of a personal injury for which he is entitled to compensation under the act shall be exclusive of all other rights and remedies available to himself or his personal representatives or dependents. This provision makes the right to compensation exclusive both as to the employee and his dependents.

Philps v. Guy Drilling Co., 143 La. —, 79 Southern 549, p. 552.

CONSTRUCTION—LIMITING REMEDIES.

The title of the employers' liability act of Louisiana (Act No. 20, 1914) expresses plainly enough the object and purpose of limiting the rights and remedies of an injured employee and the rights and remedies of the dependents or representatives of a deceased employee to the schedule of compensation established and to the liability of the employer as prescribed by the statute. The term "to prescribe" in the sense used in the statute means to lay down authoritatively as a guide or rule of action and an act prescribing the liability of an employer to make compensation for injuries received by an employee is an act limiting the rights and remedies of an employee or his representatives for injuries received by him. The expressions in the title "establishing a schedule of compensation," and "regulating procedure for the determination of liability and compensation," and "providing for payments of compensation," indicate the object or purpose of establishing the rights and remedies of one to whom compensation may be due and of thereby excluding all other rights and remedies.

Philps v. Guy Drilling Co., 143 La. —, 79 Southern 549, p. 550.

ACTION BY DEPENDENT—SUFFICIENCY OF PROOF—PROCEDURE—
REHEARING.

In an action by a dependent mother under the Louisiana employers' liability act an order for compensation can not be entered where the evidence is not so certain as to the amount of the average weekly wage her deceased son had earned nor as to the amount he contributed to her support, that the court could determine what compensation should be allowed. But the spirit, if not the letter, of the act should have permitted a rehearing of the case with permission to introduce more evidence instead of rendering a nonsuit. The act expressly declares that the judge shall not be bound by the usual common law or statutory rules of evidence nor by technical or formal

rules of procedure, but he shall decide the merits of the controversy as equitably, summarily, and simply as may be.

Philps v. Guy Drilling Co., 143 La. —, 79 Southern 549, p. 552.

ACTION FOR DAMAGES — ALTERNATIVE DEMAND FOR COMPENSATION.

In an action by a mother for damages for the death of her son on the ground of her dependency, a demand for compensation under the Louisiana Employers' Liability act was not waived, and it should not be dismissed merely because it was urged in the alternative and only in the event the court should hold the plaintiff was not entitled to damages under the Civil Code.

Philps v. Guy Drilling Co., 143 La. —, 79 Southern 549, p. 552.

PROOF OF NEGLIGENCE.

The fact that the employers' liability act of Alabama does not contain a clause to the effect that an employee should not be entitled to compensation unless the injury resulted from some impropriety or defect in the rules, by laws, or instructions, does not have the effect of dispensing with the general rule that proof of negligence in respect to the subject matter is a general precedent to a recovery.

Seagle v. Stith Coal Co., — Ala. —, 79 Southern 301, p. 302.

NEGLIGENCE—FAILURE TO PROMULGATE RULES.

The Legislature of Alabama omitted from the employers' liability act the provision that an employee shall not be entitled to compensation unless the injuries complained of result from some impropriety or defects in the rules, by-laws, or instructions. The legislature evidently intended that no liability can be predicated unless an employer is shown to be culpable either in promulgating a rule in question or in failing to promulgate a rule governing certain conditions.

Seagle v. Stith Coal Co., — Ala. —, 79 Southern 301, p. 302.

NEGLIGENT INSTRUCTIONS TO WORKMAN — LIABILITY OF EMPLOYER.

In order to render an employer, a mine operator, liable on the ground of improper or negligent instructions to a delegate under the Alabama employers' liability act, the employer must have authorized the delegate to give some definite instructions as specified by him, or generally to give some instructions; and though the instructions were formed by the delegate himself in pursuance of such authorization, they must come within the terms of the act. Prior to this act an employer would not have been liable for improper instructions from a delegate as the impropriety in the instruction could not have been

attributable to a personal breach of duty on the part of the delegate unless there had been negligence in the choice of the delegate. Where an employer has himself definitely specified the instructions to be given by the delegate the latter would be merely the mouthpiece of the employer for conveying the improper instruction and the negligence would be personal to the employer for which he is responsible.

Seagle v. Stith Coal Co., —, Ala. —, 79 Southern 301, p. 302.

EMPLOYEE OBEYING INSTRUCTION.

In an action under the Alabama employers' liability act by an employee for damages for injuries resulting from his obedience to improper or negligent instructions of another employee, the burden is on the employee to show that the person giving the improper or negligent instruction was delegated so to do by the employer.

Seagle v. Stith Coal Co., — Ala. — 79 Southern 301, p. 303.

APPLICATION TO EMPLOYEES ENGAGED IN INTRASTATE COMMERCE.

A natural gas company was engaged in transporting natural gas from West Virginia into Ohio through trunk pipe-lines and there sold to another company for distribution to its patrons and consumers in that State. The employers' liability act of West Virginia (Code, sec. 708) applies unconditionally to the employees of such natural gas company whose work was wholly intrastate and clearly separable and distinguishable from work in interstate commerce, although the same section, with respect to employees who were engaged partly in intra and partly in interstate commerce provides that the act shall only apply upon the condition that the employer and such employees voluntarily accept the provisions of the act in a stated manner.

Suttle v. Hope Nat. Gas Co., — W. Va.—, 97 Southeastern 429, p. 431.

CLASSES OF EMPLOYEES—INTERSTATE AND INTRASTATE COMMERCE— APPLICATION OF ACT.

The employers' liability act of West Virginia in its application to employees with reference to the work being done contemplates three classes: (1) those working wholly upon intrastate commerce, (2) those working wholly upon interstate commerce, (3) those working partly upon intrastate and partly upon interstate commerce. No difficulty appears as to the first and second classes, as one field belongs exclusively to the State and the other primarily to Congress. As to the third class Congress could not provide for them except as to their interstate work and has not provided for them to any extent except as to employees of carriers by railroad, so the State could cover all intrastate work and under its permissive power could provide for all

interstate work not covered by federal legislation. Section 52 of the act was made to fit that condition. The first part of the section is limited to the application of the act where the employer is engaged in both interstate and intrastate commerce to the cases where the intrastate work is clearly separable and distinguishable from the interstate. The second part of the second deals with employees working partly upon interstate and partly upon intrastate commerce and to them the act applies only by voluntary acceptance. But this acceptance is not required where the employees are engaged in work clearly separable and distinguishable from interstate commerce.

Suttle v. Hope Nat. Gas Co., — W. Va. —, 97 Southeastern 429, p. 432.

WORKMEN'S COMPENSATION ACT.

CONSTRUCTION AND APPLICATION.

The workmen's compensation act of Oklahoma must be construed to be in harmony with the provisions of the constitution and the various sections of the statutes and laws of the State so as to give meaning and effect to all, if such construction is possible without doing violence to the language and spirit of the act.

Lahoma Oil Co. v. State Industrial Commission, — Okla. —, 175 Pacific 836, p. 837.

See *Matthews v. Rucker*, — Okla. —, 170 Pacific 492.

Roma Oil Co. v. Long, — Okla. —, 173 Pacific 957.

CONSTRUCTION—OBJECT AND INTENT.

The object of all workmen's compensation acts is beneficent and bountiful and their provisions broad and generous. The intention and design of such enactments are to establish a mode for the prompt redress of grievances and secure restitution commensurate with the loss of the service by those upon whom depend for support and maintenance the persons named as beneficiaries. Strict rules are not to obtain to the detriment of a claimant in violation of this wholesome purpose.

Poccardi v. Ott, — W. Va. —, 96 Southeastern 790, p. 791.

REMEDIAL—LIBERAL CONSTRUCTION.

The workmen's compensation act of Colorado is highly remedial and beneficent in purpose and is to be liberally construed. A court should not adopt such an interpretation of a statute as would produce absurd, unreasonable, unjust, or oppressive results if such interpretation can be avoided.

Karoly v. Industrial Commission, — Colo. —, 176 Pacific 284, p. 285.

See *Employers' Mutual Ins. Co. v. Industrial Commission*, — Colo. —, 176 Pacific 314, p. 315.

ALASKA ACT—RIGHTS AND REMEDIES EXCLUSIVE.

The workmen's compensation act of Alaska supersedes the common law and by its comprehensive provisions covers the field of liability in an action by a miner for damages for injuries received while working in a mine. The remedy provided for the omission of duty on the part of a mine operator is different from that conferred by the common law and the plaintiff's right of action is statutory and the rights and limitations of the parties are fixed by the act.

Martin v. Kennecott Copper Corp., 252 Federal 207, p. 208.

ACTION UNDER WORKMEN'S COMPENSATION ACT EXCLUSIVE.

The workmen's compensation act of Alaska supersedes the common law in that territory and a common law action can not be maintained against a mine operator by a miner for damages for injuries received while working in a mine. The sole remedy is given by the workmen's compensation act of Alaska.

Martin v. Kennecott Copper Corp., 252 Federal 207, p. 208.

LAW AS PART OF CONTRACT.

The provisions of the workmen's compensation act of Alaska enter into and become part of the contract of employment between a mine operator and a miner as fully as if written out in such contract.

Martin v. Kennecott Copper Corp., 252 Federal 207, p. 208.

MINE OPERATOR REJECTING ACT—LIABILITY—DEFENSES.

A coal-mine operator who rejected the provisions of the Iowa workmen's compensation act is liable in the same manner and to the same extent as he would have been had the compensation act never been passed, except in an action by a miner for personal injuries arising out of and in the course of his employment, it will be presumed that the injury was caused by the employer's negligence and certain common law defenses will not be available to him.

Gay v. Hocking Coal Co., — Iowa —, 169 Northwestern 360, p. 362.

FAILURE TO ACCEPT—EFFECT.

A complaint in an action against an oil-well driller for damages for injuries averred that when the injury was inflicted the oil-well driller was an employer entitled to qualify under the provisions of the workmen's compensation act of West Virginia, (Acts 1915, ch. 9; Acts Extra Session 1915, ch. 1), but had failed negligently to accept the provisions of that act. An employer who is entitled to qualify under the provisions of the workmen's compensation act and fails to do so is deprived of the protection it affords and is subject to the burdens it imposes.

Long v. Foley, — W. Va. —, 96 Southeastern 794, p. 795.

ACCIDENTAL INJURY—MEANING.

An injury is accidental within the meaning of the Illinois workmen's compensation act when it occurs in the course of the employment unexpectedly and without affirmative act or design of the employee.

Matthiessen, etc., *Zinc Co. v. Industrial Board*, — Ill. —, 120 Northeastern 249, p. 251.

ACCIDENTS AND ACCIDENTAL INJURY—DEFINITION.

The word "accident" in the Illinois workmen's compensation act is not a technical legal term that has a clearly defined meaning, and no legal definition has ever been given which has been found to be exact and comprehensive as applied to all circumstances. Anything that happens without design is commonly called an accident and at least in the popular acceptance of the word any event which is unforeseen and not expected to the person to whom it happens is included in the term. The meaning of the word as used in the Illinois workmen's compensation act is necessarily influenced by the various provisions of the act and the purpose of its enactment and can not be determined alone from any definition found in a dictionary.

Matthiessen, etc., *Zinc Co. v. Industrial Board*, — Ill. —, 120 Northeastern 249, p. 251.

ACCIDENTS AND ACCIDENTAL INJURY—MEANING.

The words "accidents" and "accidental injury" imply and the provisions for notice to the employer within 30 days after an accident and his report to the industrial board of accidental injuries show, that an injury to be accidental or the result of an accident must be traceable to a definite time, place, and cause. If there is a definite time, place, and cause, and the injury occurs in the course of the employment, the injury is accidental within the meaning of the act and the obligation to provide and pay compensation arises.

Matthiessen, etc., *Zinc Co., v. Industrial Board*, — Ill. —, 120 Northeastern 249, p. 251.

"ACCIDENT" AND "ACCIDENTAL INJURY"—INCLUSIVENESS OF ACT.

The words "accident" and "accidental injury" were meant to include every injury suffered in the course of employment for which there was an existing right of action at the time the act was passed and to extend the liability of the employer to make compensation for injuries for which he was not previously liable and to limit the compensation to be paid therefor.

Matthiessen, etc., *Zinc Co. v. Industrial Board*, — Ill. —, 120 Northeastern 249, p. 251.

ACCIDENT—DISABILITY FROM OCCUPATIONAL DISEASE.

A disability caused from an occupational disease incident to the business of smelting zinc, or arising from that source, is not to be regarded as an accident within the meaning of the Illinois workmen's compensation act because such a disease has its inception in the occupation and develops over a long period of time from the nature of the occupation and not from any unusual or unforeseen cause of event. There is statutory authority for the recovery of damages if such injury resulted from the employer's violation of a statute, and the remedy in such case is not confined to the compensation provided by the workmen's compensation act.

Matthiessen, etc., *Zinc Co. v. Industrial Board*, — Ill. —, 120 Northeastern 249, p. 251.

ACCIDENTAL INJURY—ARSENICAL POISONING.

An employee in a lead and zinc smelter worked for a period of fifteen years as a fireman at the furnaces in the smelter. On the evening of the last day's work he was seized with cramps throughout his arms, legs, stomach, and bowels, and grew steadily worse and died within ten days. On petition his personal representative was entitled to an award on the ground that his death was due to acute arsenical poisoning not of a chronic nature, but his physical condition was such as to make him susceptible to arsenical poisoning in such degree as to bring on his fatal injury and death, and this was an accident within the meaning of the workmen's compensation act of Illinois.

Matthiessen, etc., *Zinc Co. v. Industrial Board*, — Ill. —, 120 Northeastern 249, p. 250.

COURSE OF EMPLOYMENT—ACCIDENT—NEGLIGENCE.

A miner had been working in the gaseous section of a mine before it was closed off and had left his mining machines and other tools in that part of the mine. Two months later while engaged in another part of the mine some considerable distance from his proper place he left his working place and went into the gaseous part of the mine, where he was told not to go and where danger signals were properly placed, to get his mining machines and tools for work. While so doing, and while in the gaseous part of the mine he was overcome with gas and died from its effects. Under these circumstances the miner died from an accident which occurred in the course of his employment within the meaning of the Pennsylvania workmen's compensation act of 1915 (Pa. Laws 1915, p. 736). The fact that he disobeyed the orders though fully understood and appreciated by him would be nothing more than a negligent act on his part and negligence on the

part of an injured employee does not bar his right to compensation under the workmen's compensation act.

Gurski v. Susquehanna Coal Co., — Pa. —, 104 Atlantic 801, p. 802.

DETERMINATION OF EXTENT OF DISABILITY—COMPENSATION.

In determining the amount of compensation to be paid an injured miner the industrial commission must first determine to what extent the complainant was disabled, as that is the basis upon which he is to be compensated and without such determination he could receive no compensation.

Employers' Mutual Ins. Co. v. Industrial Commission, — Colo. —, 176 Pacific 314, p. 315.

COMPENSATION NOT DEPENDENT UPON WRONG OR NEGLIGENCE.

The compensation to be paid to an injured employee under the Oklahoma workmen's compensation act does not depend upon whether the injury was wrongfully caused by the negligence of the employer. The compensation to be paid when an accidental injury is sustained arising out of and in the course of the employment without regard to the fault as a cause of such injury, except where the injury is sustained by the wilful intention of the injured employee, or where the injury results directly from the wilful failure of the injured employee to use a guard or protection furnished for his use. The act recognizes that a personal injury suffered by an employee arising out of and in the course of the employment is an incident of the business in which he is employed and as a matter of justice the resulting burden should be borne by the business without regard to the question of fault on the part of the employer or of the employee.

Lahoma Oil Co. v. State Industrial Commission, — Okla. —, 175 Pacific 836, p. 837.

LUMP-SUM SETTLEMENT.

The theory of the legislature in enacting section 57 of the workmen's compensation act of Colorado as to payment in gross for permanent total disability was that cases would arise in which the condition of the injured employee would be so marked that there would be little reason to anticipate improvement in earning capacity and the circumstances would be such as would warrant the court in giving judgment for a lump sum available at once rather than for periodical payments as in an award.

Karoly v. Industrial Commission, — Colo. —, 176 Pacific 284, p. 285.

LUMP-SUM SETTLEMENT—DETERMINATION.

The workmen's compensation act of Colorado (sec. 57) provides that when payment in gross is ordered the industrial commission shall fix the gross amount to be paid based on the present worth of partial payments. From this provision the commission can easily and accurately ascertain the amount of the gross payment in cases where the period for which partial payments are to be paid is fixed at a certain definite number of weeks. There is nothing in the clause which prohibits or prevents the commission from fixing a gross amount in cases where the periodical payments are to continue during the life of an injured employee. The exact number of such partial payments in the future can not be accurately ascertained, but the commission in the light of all the facts may make a reasonable estimate as to the probable number of such partial payments and the probable duration of the claimant's life. The statute by necessary implication empowers the commission to do this and to determine "the present worth of partial payments," whether the exact number of such payments can be ascertained or not.

Karoly v. Industrial Commission, — Colo. —, 176 Pacific 284, p. 286.

See Employers Mutual Ins. Co. v. Industrial Commission, — Colo. —, 176 Pacific 314, p. 316.

DENIAL OF LUMP-SUM PAYMENT—PREJUDICIAL ERROR.

An injured miner filed his petition under the Colorado workmen's compensation act for payment in a lump sum on the ground of permanent total disability. The industrial commission and the court following its finding denied the claim on the ground that section 57 of the workmen's compensation act (Session Laws, 1915) does not apply to cases of total permanent disability. By this ruling of the industrial commission and the court the miner was prejudiced by the error even though the commission also denied his application for a lump-sum settlement on the ground that it would not be for the best interest of the parties concerned.

Karoly v. Industrial Commission, — Colo. —, 176 Pacific 284, p. 285.

PAYMENT OF LUMP SUM.

The payment of a lump sum to an injured employee whose disability is only partial or temporary might be difficult to determine, but a miner who is permanently and totally disabled is as much entitled to the allowance of a gross sum as is any other injured workman. The workmen's compensation act of Colorado should be construed, if possible, so as to apply to cases of permanent total disability, since such construction would prevent oppressive results

and at the same time be in accord with the policy and purpose of workmen's compensation legislation.

Karoly v. Industrial Commission, — Colo. —, 176 Pacific 284, p. 286.

APPLICATION TO PERMANENT TOTAL DISABILITY—PAYMENT IN GROSS.

Section 57 of the workmen's compensation act of Colorado (Session Laws, 1915) provides that in six months from the date of an injury the commission may order payment in gross or otherwise as it may determine to be for the best interests of the parties concerned. It is made the duty of the commission to fix the gross amount to be paid, based on the present worth of partial payments, considering interest at 4 per cent. This section applies to cases of total permanent disability and gives the commission the power to order payment in gross in such cases.

Karoly v. Industrial Commission, — Colo. —, 176 Pacific 284, p. 285.

TOTAL PERMANENT DISABILITY—WEEKLY ALLOWANCE—LUMP-SUM SETTLEMENT.

A miner injured while working in a mine presented a petition to the Colorado Industrial Commission alleging permanent total disability and asking the commission to order that he be paid a lump sum. The commission found that he was suffering a permanent total disability and awarded him \$8 per week and denied him a lump-sum settlement. If, as is possible and also probable, according to the petition of the injured miner, he will be compelled to appeal to the public for aid, then one of the objects of the compensation act will be defeated and the burden of bearing the economic loss resulting from the injuries that should be borne by the industry in which the injury occurred will instead be cast upon society as a whole. The intention of the act is to provide compensation for injured workmen, and circumstances may occur where the compensation would be more just, equitable, appropriate, and beneficial if paid in a lump sum than if paid in small weekly installments.

Karoly v. Industrial Commission, — Colo. —, 176 Pacific 284, p. 286.

See Employers Mutual Ins. Co. v. Industrial Commission, — Colo. —, 176 Pacific 314, p. 315.

COMPENSATION—MAXIMUM AMOUNT—LIFE EXPECTANCY.

When the Colorado Industrial Commission determines the extent of the disability of a claimant and the condition is determined to be permanent, it is permissible for the commission to ascertain and consider the life expectancy of the claimant as an aid in fixing the aggregate amount due him under the statute. As the statute provides a maximum amount which a claimant may receive for perma-

nent total disability, his life expectancy is at least a proper element for consideration in determining whether he is entitled to the full maximum amount or a less sum.

Employers' Mutual Ins. Co. v. Industrial Commission, — Colo. —, 176 Pacific 314, p. 315.

WEEKLY PAYMENTS—METHODS OF ASCERTAINING.

The workmen's compensation act of Colorado limits the amount of weekly allowances to not more than \$8 per week, and aside from this there is no restriction upon the industrial commission as to weekly allowances to be paid injured claimants. The act provides that after six months from the date of injury payments may be ordered to be made in such manner as the commission may determine to be for the best interest of the parties concerned. The fact that an increase in weekly payments operates to the detriment of an indemnity company on the ground that the longer the time given to complete the payment the more likelihood there will be that the claimant will die and thus relieve the insurer of further liability. But this is neither a legal nor logical reason for denying the right of the commission to use its discretion in the matter of fixing the size of the weekly installments after the lapse of the first six months after the injury.

Employers' Mutual Ins. Co. v. Industrial Commission, — Colo. —, 176 Pacific 314, p. 315.

COMPENSATION AWARDED—SUBSEQUENT DEATH—EFFECT.

An injured employee of an oil company secured a determination and an award for permanent disability, under the Oklahoma workmen's compensation act (Laws 1915, ch. 246). On the death of the employee, before the lapse of the maximum number of payments had been made according to the award, the right to future compensation under the award ceased with his death.

Lahoma Oil Co. v. State Industrial Commission, — Okla. —, 175 Pacific 836, p. 837.

INJURY RESULTING IN DEATH—COMPENSATION.

The Oklahoma workmen's compensation act (art. 6, sec. 1) expressly states that it is not intended that any of the provisions of the act shall apply in cases of accidents resulting in death, and no right of action for damages for injuries resulting in the death of an employee is intended to be denied or affected. It can not be insisted that this section applies only to the right of action accruing to the next of kin for pecuniary loss sustained on account of the wrongful death of an employee. The compensation act does not supplant the right of action for pain, suffering, medical expense, etc. An award made to an injured employee does not vest at his death

in his representatives, but the right to compensation under the award ceases with his death.

Oklahoma Oil Co. v. State Industrial Commission, — Okla. —, 175 Pacific 833, p. 837.

WRONGFUL DEATH—APPLICATION OF WORKMEN'S COMPENSATION ACT.

The workmen's compensation act of Oklahoma has no provision applicable in case of accident resulting in death. The act gives no right of action for the recovery of damages for wrongful death nor does it deny the right of action in such case and the existing right of action under other statutes is not affected.

Oklahoma Oil Co. v. State Industrial Commission, — Okla. —, 175 Pacific 836, p. 837.

NOTICE OF INJURY—ACTUAL KNOWLEDGE.

The workmen's compensation act of Indiana (acts 1915, p. 397; sec. 8020f1, Burns Suppl.) requires an injured employee to give written notice to the employer of the injury; but no rights are waived or forfeited if the employer or his agent had knowledge of the injury. On a petition by an injured miner for compensation, the industrial board found that the employer, the mine operator, by its agents and representatives had actual knowledge of the injury at the time it occurred and that a reasonable excuse was shown for the failure of the miner to give the statutory notice. The findings of the industrial board are binding upon the courts, if there is any evidence tending to sustain such findings. In the instant case the evidence was ample to support the findings of the industrial board on the question of notice.

Vandalia Coal Co. v. Holtz, — Ind. App. —, 120 Northeastern 386, p. 387.

INJURY—KNOWLEDGE OF EMPLOYER'S AGENTS—NOTICE UNNECESSARY.

The Indiana workmen's compensation act requires an injured employee to give written notice to the employer of the injury, unless it is shown that the employer, his agent or representative, had knowledge of the injury. A coal miner while operating an electrical machine in a coal mine was struck in the eye by a flying particle. The chief electrician, or machine foreman, under whom the injured miner worked, had actual knowledge of the injury within a few minutes after it occurred; and soon after the injury the miner's eye was examined by the employer's physician. The miner also later reported to the mine boss, the foreman of the mine, that he was unable to work and showed him his eye. The mine boss told him he was not able to work and informed him that his job was ready for him when he got able to work. This evidence was sufficient to justify the findings of the accident board that the employer by its agents and representatives had actual knowledge of the injury.

Vandalia Coal Co. v. Holtz, — Ind. App. —, 120 Northeastern 386, p. 388.

PRIMA FACIE CASE—PROOF OF EMPLOYMENT AND INJURY.

In an action by a miner for injuries resulting from the mine operator's failure to ventilate the mine as required by the statute of Iowa, and where it is averred that the mine operator has refused to accept the provisions of the workmen's compensation act, the plaintiff has discharged the burden of proof and makes a prima facie case by proof of his employment, the rejection of the provisions of the workmen's compensation act by the defendant, and that the injury complained of arose out of, and in the course of, his employment. The burden is then cast upon the defendant to rebut the statutory presumption of actionable negligence. Such proof is in itself sufficient to raise a presumption which serves as evidence of the operator's negligence and that such negligence was the proximate cause of the injury complained of.

Gay v. Hocking Coal Co., — Iowa —, 169 Northwestern 360, p. 364.

RELATION OF MASTER AND SERVANT—INDEPENDENT CONTRACTOR.

A contract by which one party undertook to drive and construct a mining tunnel for a particular distance of certain stated dimensions, to do the work in a miner-like fashion and maintain all work driven under the contract until completion, at a certain stated price per lineal foot, the contractor reserving 20 per cent of the contract price until the completion of the work as a guarantee for its completion, the contractor reserving no control of the work more than was necessary to insure its producing the result provided for, does not create the relation of master and servant under the workmen's compensation act of Colorado.

Industrial Commission v. Maryland Casualty Co., — Colo. —, 176 Pacific 288, p. 289.

PROOF OF DEPENDENCY—CLAIM FOR COMPENSATION.

Evidence that would sustain the verdict of a jury, if one were rendered upon the proof before the compensation commissioner upon the facts of dependency where that is the ground upon which a claim for compensation is predicated, must be sufficient to support a claim for compensation out of the workmen's compensation fund based upon the same ground.

Poccardi v. Ott, — W. Va. —, 96 Southeastern 790, p. 791.

DEPENDENCY—DECISION OF COMPENSATION COMMISSIONERS—
REVIEW.

The proof offered by a widow of an employee killed while working in a coal mine, in support of her claim as a dependent for contribution under the workmen's compensation act of West Virginia, was clear

and uncontradictory. Under that act, where there is no conflict in the testimony, dependency is not merely a fact finally and conclusively determined by an adjudication of the commissioner, but is a question of law to be determined upon the pertinency and applicability of the proof. To be conclusive the finding of the commission must rest upon conflicting proof about which some doubt may reasonably exist. In the absence of conflict or an adverse adjudication of the widow's right to compensation may be revised and the claim allowed upon appeal to the supreme court.

Poccardi v. Ott, — W. Va. —, 96 Southeastern 790.

INJURY ARISING OUT OF EMPLOYMENT—DANGER ZONE.

The operator of a quarry maintained a commissary within the danger zone of its blasting and in effect invited its employees to stop there on the way home. Blasts in the quarry were fired about ten minutes after work ended for the day and a whistle was sounded to give notice of the intended blast. An employee on quitting work stopped at the commissary and on the sounding of the warning whistle failed to seek a place of safety and was killed by a stone from the blast. Under such circumstances the injury to the employee arose out of the employment within the workmen's compensation act of Connecticut.

Merlino v. Connecticut Quarries Co., — Conn. —, 104 Atlantic 396. p. 397.

OCCUPATIONAL DISEASE—REJECTION OF ACT.

The question of the liability of a mine operator to a miner on account of an occupational disease contracted in the course of his employment where both the employer and the employee have accepted the terms of the compensation act, can not arise and can not be determined in an action where it is admitted that the employer had rejected the provisions of the workmen's compensation act.

Gay v. Hocking Coal Co., — Iowa —, 169 Northwestern 360, p. 362.

EMPLOYEE OF INTERSTATE CARRIER OF GAS—APPLICATION OF ACT.

An employee of an interstate carrier of natural gas assisting in the erection of a derrick to be used in cleaning out a gas well and whose work at the time was wholly distinguishable from the transportation phase of the business, was engaged in work clearly separable and distinguishable from interstate commerce within the meaning of section 52 of the workmen's compensation act of West Virginia, and was entitled to the benefit of the provisions of that act.

Suttle v. Hope Nat. Gas Co., — W. Va. —, 97 Southeastern 429, p. 432.

INDUSTRIAL COMMISSION—JURISDICTION AND EFFECT OF AWARD.

An award made by the industrial commission under the workmen's compensation act of Oklahoma does not possess the essentials of a judgment. Under the continuing jurisdiction of the commission to modify or change an award it can not be said that an award is a fixed, determined, or a definite amount to be paid for a fixed number of weeks. The industrial commission can not enforce the payment of an award by execution or order; but the act provides (art. 2, sec. 16) that the award shall constitute a liquidated claim for damages which may be recovered in an action instituted by the commission.

Lahoma Oil Co. v. State Industrial Commission, — Okla. —, 175 Pacific 836, p. 837.

INDUSTRIAL COMMISSION—JURISDICTION CONTINUOUS—CHANGE IN AWARD.

The finding and award of the industrial commission at a stated date on an application by an injured miner for compensation is not final under the Colorado workmen's compensation act in the sense that regardless of the future physical condition of the claimant neither he nor the insurer should be permitted to show any physical change. For this reason the commission not only has the right but it is its legal duty to retain jurisdiction of the proceedings for further action and award if the facts should warrant.

Employers' Mutual Ins. Co. v. Industrial Commission, — Colo. —, 176 Pacific 314, p. 316.

INDUSTRIAL COMMISSION—JURISDICTION—DEATH OF INJURED EMPLOYEE.

Where the injuries to an employee result in death the (Oklahoma) workmen's compensation act no longer applies and the industrial commission has no further jurisdiction of the proceedings. Any cause of action arising from the death resulting from the injuries were survived to the personal representatives under the general statute, as though the workmen's compensation act had never become a law. The only effect of the workmen's compensation act was to afford an injured employee a special procedure under which to maintain his action where the injuries do not result in death.

Lahoma Oil Co. v. State Industrial Commission, — Okla. —, 175 Pacific 836, p. 837.

FINDING OF FACTS BY REFEREE—COMPREHENSIVENESS.

When a case under the workmen's compensation act is referred to a referee for a hearing and finding of facts, he should make his findings of fact so comprehensive and explicit as to disclose the full

history of the accident; and where the compensation board has no hearing de novo, it should not find facts in addition to those stated by the referee.

Gurski v. Susquehanna Coal Co., — Pa. —, 104 Atlantic 801, p. 802.

FINDING OF COMPENSATION BOARD—FACTS CONCEDED.

It is not the duty of the compensation board under the Pennsylvania workmen's compensation act to find facts in addition to those stated by a referee. But where the compensation board does find additional facts, it is immaterial where all the parties concede the correctness of the statement of facts contained in the finding of the board.

Gurski v. Susquehanna Coal Co., — Pa. —, 104 Atlantic 801, p. 802.

FINDING OF COMMISSION—PRIMA FACIE EVIDENCE OF RIGHT TO RECOVER—INJUNCTION.

A finding and judgment of the industrial commission under the Colorado workmen's compensation act in favor of a claimant is prima facie evidence of his right to recover. The payments awarded can not be enjoined by an indemnity insurance company pending an appeal and before a decision of the court on the questions involved.

Employers' Mutual Ins. Co. v. Industrial Commission, — Colo. —, 176 Pacific 314, p. 316.

FINDING OF INDUSTRIAL COMMISSION—REVIEW.

The industrial commission of Colorado, on a petition by an injured miner, entered an order for the payment of a weekly allowance. Subsequently the claimant filed a new petition asking for further compensation, and a finding was then entered to the effect that the claimant was permanently partially disabled, and thereupon the commission made new findings and a new award. This new award was manifestly supported by competent evidence, and it may not be lawfully overturned by the court as neither the first nor the second finding of fact was in excess of the powers of the commission nor procured by fraud, and as both are supported by sufficient competent evidence there is no ground for attack upon either and neither may be lawfully overturned on appeal.

Employers' Mutual Ins. Co. v. Industrial Commission, — Colo. —, 176 Pacific 314, p. 316.

PROCEDURE—RULES OF EVIDENCE.

The workmen's compensation acts relax the common law and statutory rules of evidence and abolish the technical and formal rules of procedure other than those expressly retained, and require each claim to be investigated in such manner as may best be calculated to

ascertain the substantial rights of the parties and justly and liberally effectuate the spirit and purpose of their provisions.

Poccardi v. Ott. — W. Va. —, 96 Southeastern 790, p. 791.

PROCEDURE—PAYMENT OF AWARD—STAY PENDING APPEAL.

Procedure under the workmen's compensation act of Colorado is summary in character in order to furnish immediate aid to injured employees, and the statute taken as a whole leads to the conclusion that it was not the intention of the legislature that payment of weekly allowances should be stayed or enjoined pending an appeal.

Employers' Mutual Ins. Co. v. Industrial Commission. — Colo. —, 176 Pacific 314, p. 316.

APPEAL FROM JUDGMENT CONFIRMING AWARD.

The statute of Wisconsin (Stats. 1917, sec. 2394-21) gives any party aggrieved by the judgment of the court confirming an award of the industrial commission the right of appeal to the supreme court. An appeal is taken from such an order by serving notice on the adverse party and on the clerk of the trial court within 30 days from the date of service or a copy of the order. An appeal taken after that time must be dismissed.

Frontier Min. Co. v. Industrial Commission. — Wis. —, 169 Northwestern 312.

APPEAL—"ADVERSE PARTY"—SERVICE OF NOTICE.

The workmen's compensation act of Wisconsin provides for an appeal from the judgment of any court confirming the award of the industrial commission by the service of notice on the "adverse parties." The industrial commission is necessarily a party defendant in such proceedings, but the "adverse parties" are the claimants in whose favor the award was made and the judgment rendered, as they are the owners of the judgment and the only persons who have a substantial pecuniary interest in sustaining it.

Frontier Min. Co. v. Industrial Commission. — Wis. —, 169 Northwestern 312.

APPEAL FROM COMMISSIONER—ADDITIONAL EVIDENCE NOT CONSIDERED.

On appeal from a finding of the commissioner under the West Virginia workmen's compensation act the court can consider only such proof as was before the compensation commissioner at the time he acted and ruled upon the application; and the court can not consider evidence taken and filed by the complainant during the pendency of the application on appeal.

Poccardi v. Ott. — W. Va. —, 96 Southeastern 790, p. 791.

MINES AND MINING OPERATIONS.

RELATION OF MASTER AND SERVANT.

PROOF OF RELATION—SUIT BY STRANGER.

In simple negligence cases an injured person can not sue as a stranger and recover upon proof which shows the existence of the relation of master and servant.

Montevalo Min. Co. v. Underwood, — Ala. —, 79 Southern 453, p. 455.

CONSTRUCTION OF CONTRACT—INDEPENDENT CONTRACTOR.

A mine owner entered into a written contract with a miner by which the latter was to drive a mining tunnel a stated distance and of stated dimensions for a stated price per lineal foot. The mine owner retained no right of control other than that which should secure the proper result from the work. The contract being in writing the relation which it created between the parties thereto was exclusively within the province of the court to determine, and the court determined that the contract did not create the relation of master and servant but that of independent contractor.

Industrial Commission v. Maryland Casualty Co., — Colo, —, 176 Pacific 288, p. 290.

ACTIONS—PLEADING AND PROOF OF NEGLIGENCE.

DEFINITE AVERMENTS.

In an action for damages for injuries due to the alleged negligence of the operator, averments of the complaint are sufficiently definite and specific where they fully advise the defendant as to every phase of the charge made against him. Such a pleading is not required to aver more than evidentiary facts.

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 North-eastern 664, p. 666.

PLEADING—FACTS WITHIN KNOWLEDGE OF DEFENDANT.

A complaint in an action by a miner for damages for injuries received while working in a mine need not aver facts peculiarly within the knowledge of the mine operator or that may be easily ascertained by him.

Jackson Hill Coal & coke Co. v. Van Hentenryck, — Ind. App. — 120 North-eastern 664, p. 666.

PLEADING—CAUSAL CONNECTION.

In an action by a miner for damages for personal injuries it is sufficient if there be an apparent causal connection between some, though not necessarily all, of the negligent acts averred and the infliction of the injury complained of. Any other averments may be regarded as surplusage.

Long v. Foley, — W. Va. —, 96 Southeastern 794, p. 795.

RECOVERY MUST FOLLOW ALLEGATIONS OF NEGLIGENCE.

In an action by an injured employee in a mine, he alleged that it was his duty to board the cars or trip while in motion, and he averred negligence on the part of the operator in failing to give him proper instructions relative to getting on and off moving trips. Under such an allegation of negligence the complainant can not recover on the theory that the mine operator negligently failed to warn or instruct him not to get on moving trips of cars.

Walsky v. H. C. Frick Coal Co., — Pa. —, 104 Atlantic 798, p. 799.

NEGLECTANCE PRESUMED—PRIMA FACIE EVIDENCE.

In an action by a miner for damages for injuries sustained by reason of the negligence of the mine operator in failing properly to ventilate the mine, the burden of proving the negligence charged is upon the complainant and that the injury complained of resulted from such negligence; but he has discharged this burden, under the provisions of the workmen's compensation act and makes a prima facie case by proof of his employment and of the fact that he was injured and that the injury complained of arose out of and in the course of his employment. The statute then casts the burden upon the defendant to rebut the statutory presumption of actionable negligence. Such proof is by the statute made sufficient to raise a presumption which serves as evidence of the employer's negligence and that such negligence was the proximate cause of the injury complained of.

Gay v. Hocking Coal Co., — Iowa —, 169 Northwestern 360, p. 364.

NEGLECTANCE PLEADED—PROOF INSUFFICIENT TO SUSTAIN.

The negligence charged in an action by a 17-year-old boy in the operation of coal cars was that the mine operator did not furnish him with reasonably safe cars, connections, and appliances. The proof showed that a trip of 13 cars parted between the seventh and eighth cars and that the seven cars ran away down grade; but there was no evidence of any defects in the connections between the cars. The evidence was all to the effect that the hitchings, clevises, and pins connecting the cars were all in good condition and the cause of the

disconnection of the cars remained a matter of conjecture. The allegation of negligence was not supported by the proof.

Walsky v. H. G. Frick Coal Co., — Pa. —, 104 Atlantic 798.

INSTRUCTIONS AS TO PROOF OF NEGLIGENCE—ISSUES LIMITED.

Injuries complained of by the complainant received while working in a smelting plant were alleged to be due to the negligence of the company in constructing a supporting form for cement, as a pier or pillar for an ore drier, in such close proximity to a track on and by which was carried around a rabble rake for the purpose of stirring the hot ore, so as to make it necessarily dangerous and hazardous for the employee to work upon such form while the rabble rake was being operated; and also negligence in starting the rabble rake without giving notice or warning to the employee while working upon such form. The proof on the trial of the case narrowed the issue to the sole question of negligence in starting the rabble rake without giving notice to the injured employee. There was no substantial evidence tending to show any negligence as to the construction of the form as charged. In such case it was error for the court to instruct the jury to the effect that if the complainant established one of the allegations of negligence alleged in the complaint they should find for the complainant.

Athletic Min. & Smelting Co. v. Sharp, — Ark. —, 205 Southwestern 695, p. 698.
See Daniel Boone Coal Co. v. Turner, — Ky. —, 205 Southwestern 931.

ACTION BY BOY—AVERMENT OF IMMATURITY.

A car driver, a boy 16 years of age, sued a coal mine operator for damages for injuries caused by the alleged negligence of the operator in furnishing him an unfit mule to drive. The complaint averred that the plaintiff was 16 years of age and physically and mentally immature and undeveloped. This averment, taken in connection with his age and inexperience, are sufficiently definite for any purpose they serve in the case and have some bearing on the question as to whether the boy knew and appreciated the hazards of the work he was employed to do. These averments fully advised the mine operator as to the character of the charge of negligence.

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 Northeastern 664, p. 666.

AMENDED COMPLAINT—STATUTE OF LIMITATIONS.

In an action by a miner for damages for injuries no specific grounds of negligence were stated in the original complaint. After the expiration of two years and after the original action was barred by the statute of limitations, an amended complaint or petition was filed alleging specifically and in detail the particular acts of negligence

complained of. The rule is where the amendment does not state a new cause of action but only elaborates or amplifies the general charge made in the prior pleading, or states new grounds of specifications germane to such charges and allegations, the amendment will be upheld without regard to the statute of limitations.

James v. Winnifred Coal Co., — Iowa —, 169 Northwestern 120, p. 124.

INSTRUCTION AS TO SHOT-FIRING.

A miner's action for damages for injuries was based upon the mine operator's alleged negligence in failing to maintain a proper ventilation in the mine by reason of which there was an accumulation of combustible gases and dust to such an extent that there was an explosion which caused the injury complained of. On the trial of the case under such a charge it was error under such an allegation for the court to instruct the jury to find for the complainant if the defendant or its mine boss failed to use ordinary care in regulating the time and manner in which the miners should fire their shots and negligently allowed them to fire their shots in such a way as to cause the explosion. An instruction is not authorized upon an issue not made or presented by the pleading.

Daniel Boone Coal Co. v. Turner, — Ky. —, 205 Southwestern 931, p. 933.

PROOF OF CIRCUMSTANCES—INFERENCE FOR JURY.

Where all the circumstances attending an accident and the resulting injury are proved and where the facts themselves are undisputed, the inference to be drawn and the question as to whether the proper care was given, or whether the circumstances established negligence, is for the jury and not a question of law for the court.

Federal Min. & Smelting Co. v. Anderson, 253 Federal 362, p. 364.

JURISDICTION OF COURT—INJURIES RECEIVED IN ALASKA.

A miner can not maintain an action in either a State or Federal court against a mine operator for damages for injuries received while working in a mine in Alaska. The workmen's compensation law of Alaska supersedes all common-law actions for recovery for personal injuries and is the source of the right of the action and determines the extent of liability. Such an action is no longer transitory but local and the forum is fixed and the remedy can not be sought elsewhere.

Martin v. Kennecott Copper Corp., 252 Federal 207, p. 208.

NEGLIGENCE OF OPERATOR.**QUESTION OF FACT.**

A person employed in the operation of a cage at a mine was injured by the descending cage striking a piece of steel protruding into the shaft which was thereby thrown against the complainant causing the injury. The charge of negligence was that the mine operator permitted the pieces of steel to be piled or left near the edge of or near to and over the edge of the shaft by reason of which the cage as it descended struck the end of the steel and threw it up and against the complainant inflicting the injuries complained of. There was some proof to show that the accident occurred as alleged but there was evidence to the contrary. Under such conflicting evidence the question of negligence of the mine operator in depositing the piece of steel causing the injury was one of fact to be determined by the jury.

Federal Min. & Smelting Co. v. Anderson, 253 Federal 362, p. 363.

PLEADING AND PROOF—RES IPSA LOQUITUR.

The negligence of a mine operator is not to be inferred but must be proved by the party charging it, and the doctrine of *res ipsa loquitur* is not applicable as it is impossible to say that the accident and the circumstances under which it occurred naturally raise the presumption that the mine operator violated any duty which the law imposed upon him.

Suborich v. Alaska United Gold Min. Co., 251 Federal 885, p. 886.

GROUND'S OF NEGLIGENCE—PLEADING.

In an action by a minor for personal injuries caused by the alleged negligence of the mine operator, the complainant may aver the negligence complained of in general terms and he may then show any specific acts of negligence which the evidence conduces to support; but if the complainant specifically avers the acts constituting the negligence he can not then prove or rely upon acts of negligence not alleged in his pleadings.

Daniel Boone Coal Co. v. Turner, —Ky. —, 205 Southwestern 931, p. 933.

CONCURRENT CAUSES—LIABILITY.

An oil company maintained a nuisance in the public street in that it permitted a dense volume of smoke from partly burned oil to be suddenly thrown off and out from a machine operated by it obstructing the view of persons passing on the street. The oil company was liable under these circumstances for an injury to a pedestrian caused while enveloped by the smoke, who was struck and run over by an automobile, on the theory that where two concurrent causes

operate in producing an injury there may be a recovery against both or either one of the parties responsible for the concurrent causes.

Bonner v. Standard Oil Co., — Ga. —, 90 Southeastern 573, p. 574.

PROOF OF CAUSE OF INJURY—RECOVERY.

Where the evidence points to a certain cause for an accident in mining operations that would fasten liability on the mine operator, an injured miner will not be denied redress on the ground that there may be some other possible cause for the accident.

De Nardo v. Stephens-Jackson Co., — Pa. —, 104 Atlantic 584, p. 585.

DUTY OWING—FAILURE TO DISCHARGE.

A railroad company owed an employee of a coal mine operator the duty of warning him, while engaged in loading a car of coal of its purpose to set or place an empty car on the same track or switch, but instead of performing that duty itself it depended upon the coal-mining company to discharge the duty, but the coal-mining company neglected to do so, and the miner to whom the duty was owing was injured by reason of the setting of the empty car. The railroad company that owed the duty is liable in damages for the injury resulting therefrom.

Johnson v. Waverly Brick & Coal Co., — Mo. —, 205 Southwestern 615, p. 617.

ADOPTION OF DEFECTIVE METHOD OF OPERATION.

The duty of a mine operator to exercise care for the safety of the employees is commensurate with the danger reasonably to be anticipated and the rule is especially applicable to the plan or method of operation deliberately adopted by the employer or his representatives. In such case the employer is liable if an injury to an employee is the result of a defective system not adequately protecting the employees.

De Nardo v. Stephens-Jackson Co., — Pa. —, 104 Atlantic 584, p. 585.

SAFETY DEVICE—FAILURE TO INSTALL.

It can not be asserted that because a safety device depends for its effectiveness on human agency, that the prompt and efficient use of such agency is inherently too uncertain and speculative to show a causal connection between the uncertain agency and the injury. Many safety devices, such as signals, depend largely for efficiency on their being promptly put in motion by human agency, and the absence of such signal device is declared negligence per se or at least as prima facie established by positive law. The inherent uncertainty of the human agency operating such device has never been regarded or declared sufficient to break the causal connection as a matter of law. The law presumes that the person operating such device or signal will

do his duty and use the same promptly and efficiently when practicable to do so, and it is sufficient in such cases to show that such device is practical, efficient, and in general use.

Honey v. St. Regis Min. & Smelting Co. — Mo. —, 205 Southwestern 93, p. 95.

UNSAFE PLACE AND APPLIANCES—LIABILITY.

An oil-well driller is liable for injuries received by a "stabber" in his efforts to connect the tubing or casing in an oil well where the operator negligently failed to furnish a sufficiently strong rope or casing line where the casing was hoisted rapidly, instead of slowly according to the custom, and where he failed to furnish a safe light at the place where the stabber was required to work under the rule of liability for the failure of an employer to furnish a safe place and safe appliances.

Long v. Foley, — W. Va. —, 96 Southeastern 794, p. 795.

FAILURE TO PROVIDE PLATFORMS AND LADDERS.

A mine operator maintained a shaft 550 feet deep with ladders and platforms 25 or 30 feet apart, but from the 450-foot level in the mine there was but one continuous ladderway without platforms to the bottom of the shaft, a distance of 95 feet. These platforms in the shaft were safety devices and resting places of the greatest importance and to omit them for a space of 95 feet from the bottom of the mine was gross negligence on the part of the mine operator.

Parrish v. Richardson, — N. C. —, 97 Southeastern 225, p. 226.

METHOD OF HANDLING ORE—ADOPTING PRECAUTIONARY MEASURES.

A mining and smelting company stored large quantities of ore on the upper floor of an underground tunnel at the same time filling the chute leading to the rooms below and piling the ore over the top of the chute. Occasionally when the ore was drawn from the chute below, the ore above the top of the chute would not fall. This condition was known to the mining and smelting company and was sufficient to charge it with the duty of anticipating danger to the ore tenders in the upper room and of adopting reasonable precautionary methods to prevent the condition, and failing to do so the company is liable in damages for an injury to an ore tender who in passing over the ore in the line of his duty fell with the ore into the chute that had previously been emptied from below.

Federal Min. & Smelting Co. v. Dalo, 252 Federal 356, p. 358.

USE OF GRIZZLIES.

There is nothing necessarily or inherently improper or careless in mining companies using grizzlies in sorting the rock to fall into the ore chute below.

Suborich v. Alaska United Gold Min. Co., 251 Federal 885, p. 886.

LEAVING TIMBER TRUCK ON MINE TRACK.

A driver of a mule train maintaining a speed of some 8 miles per hour hauling ore out of the mine could not anticipate without warning of some kind that a timber truck was on the track around a curve ahead of him, and where he had for months passed the place many times a day without previously encountering timber trucks, with one exception, and the shift boss then promised him that it would not occur again. The leaving of the timber truck upon the track under such circumstances was such negligence as to render the mine operator liable for a resulting injury to the car driver.

Asbury v. Hecla Min. Co., — Wash. —, 175 Pacific 179, p. 181.

SWITCHING CARS WITHOUT WARNING.

It is actionable negligence on the part of a coal company and on the part of a railroad company supplying the coal company with cars to switch and run a car onto a track or spur where another car was being loaded with coal and while an employee of the coal company was engaged in trimming the car in the line of his duty by removing rock and foreign material in such manner as to strike and bump the car being loaded and to throw the miner off the car and under the wheels to his severe injury.

Johnson v. Waverly Brick & Coal Co., — Mo. —, 205 Southwestern 615, p. 616.

EXPLOSIVES EXPOSED TO CHILDREN—LIABILITY.

A mining company is liable in damages to a boy 8 years old injured by the explosion of a dynamite cap where the company kept such caps in an open box at the side of a building and near a path used by the public, including children, and with knowledge that large numbers of children and adults had used the path for years, and where there was no notice that the caps were dangerous and the boy did not in fact know of the danger.

Anderson v. Newport Min. Co., — Mich. —, 168 Northwestern 523, p. 524.

OPERATIONS OF SMELTER—POLLUTION OF STREAM—INJURY TO LANDS.

An ore-washer company operated its plant on a stream and for a period of ten years had caused water, débris, mud, and muck and other foul substances to float down the stream and upon and over adjoining lands to its injury. A land owner in his complaint for damages in

an action against the washer company averred that by reason of the flow of water and the deposit of muck and mud and other foul substances, he had lost the use of his residence and was deprived of his lands for farming purposes and other domestic uses for one year next preceding the filing of the complaint. The defendant justified on the ground that its operations had been continuous and notorious and with knowledge and acquiescence of the land owner for a period of ten years. On the trial of the case the washer company requested the court to instruct the jury that the complainant could not recover damages for the pollution of the water running through his land. This instruction was correctly refused for the reason that it barred the complainant's right to recover for the pollution of the stream only, where the injuries alleged and for which damages were claimed consisted not in the pollution of the water, but of the deposit of mud and muck and other foul substances carried down the stream and that had overflowed and settled upon the complainant's land by which he had lost the use of his residence and was deprived of his lands for farming and domestic uses.

Tennessee Coal, Iron, etc., Co. v. Bunn, — Ala. —, 79 Southern 360, p. 362.

DUTY OF OPERATOR TO FURNISH SAFE PLACE.

PLEADING—AVERMENTS OF EMPLOYER'S DUTY.

A complaint in an action by a miner for damages for injuries received while working in a coal mine by its allegations showed the relation of the employer and employee between the complainant and the defendant, the character of the work to be done by the complainant, and the equipment furnished by the operator for the use of the complainant as a driver. The averments also showed that the alleged defects or unfitness existed at the time the appliances were furnished the complainant for his use. Under such averments the mine operator is presumed to have known of the defects and unfitness when the alleged appliances were furnished and the duty arises as a matter of law from the relation of the parties. When the averments show the existing relation the law supplies the reason. Good pleading does not require or permit the elaboration of reasons for the rules of law applicable to the case made by the facts stated.

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 Northeastern 664, p. 667.

DUTY AND BREACH—PLEADING.

It is the duty of an employer to exercise reasonable care to furnish a safe place for his employees to work. This includes the duty of furnishing lights when necessary, having due regard for the character of the work, the time, manner, and place of its performance and the

safety of the employee. It includes the exercise of like care to furnish a place which will not deprive an employee of the free use of either hand or arm when such use of both is usual and necessary in the ordinary and usual safe performance of the work required. A pleading that avers such duty and the breach thereof whereby the injury complained of occurred, states a cause of action and is sufficient.

Long v. Foley, — W. Va. —, 96 Southeastern 794, p. 795.

CONTINUING DUTY.

A mining and smelting company that stored its ore in the upper chamber of an underground tunnel and over the mouth of an ore chute that conveyed the ore to the lower level was bound to see that the place was reasonably safe and by the exercise of reasonable care in the way of inspection and repair, to see that the place was kept and maintained in a reasonably safe condition.

Federal Min. & Smelting Co. v. Dalo, 252 Federal 356, p. 358.

DUTY OWING TO MINER.

A coal-mine operator owes a miner the duty to furnish him a reasonably safe place to work.

Gay v. Hocking Coal Co., — Iowa —, 169 Northwestern 360, p. 362.

MINER'S RELIANCE ON EMPLOYER'S PERFORMANCE OF DUTY.

A timberman in a mine was sent by the shift boss into a different part of the mine to perform another and different kind of work. He had not been informed and had not in fact noticed the dangerous condition and he had the right to assume that the place was safe, especially as it did not appear to him to be dangerous.

Dovich v. Chief Consolidated Min. Co., — Utah —, 174 Pacific 627, p. 632.

CONTRACT RELIEVING OPERATOR FROM DUTY.

A coal-mine operator can not relieve himself by contract from the necessity of furnishing his employees a safe place within which to work.

Creek Coal Min. Co. v. Paprotta, — Okla —, 175 Pacific 235, p. 237.

FAILURE TO FURNISH—OCCUPATIONAL DISEASE—LIABILITY.

If a coal-mine operator fails to provide a reasonably safe place for a miner to work, or fails to observe the specific requirements of the statute with reference to ventilation, and as a result of such negligence a miner is injured, the mine operator can not avoid liability by calling the disease an "occupational disease," or by showing that diseases of that nature are often the accompaniment or result of such

employment even when all due care has been exercised by the mine operator. If the operator was negligent, or if he failed to furnish the statutory amount of ventilation, and if the miner was injured by reason of such violation of the statute, then the operator's liability is foreclosed.

Gay v. Hocking Coal Co., — Iowa —, 169 Northwestern 360, p. 363.

PRECAUTIONARY METHODS—DANGEROUS CONDITIONS.

A smelting company in the matter of handling its ores is bound to furnish its employees a reasonably safe place in which to work and to adopt reasonable precautionary methods to prevent dangerous conditions by which employees may be injured.

Federal Min. & Smelting Co. v. Dalo, 252 Federal 356, p. 358.

EMPLOYER'S KNOWLEDGE OF DANGER—PROOF—DECLARATIONS OF FOREMAN.

An administrator of a deceased miner sued the mine operator for damages for the death of the miner resulting from a fall from a ladder caused by another employee falling from the ladder striking the deceased miner and causing him to fall to the bottom of the shaft. The negligence averred was that the mine operator failed to provide proper platforms for the last 100 feet of the shaft in the mine, which was some 500 feet deep. On the trial of the action a miner testified that some time before the accident he informed the foreman that the shaft ought to be finished by putting in the needed platforms, and the mine foreman said it should be done but he did not have the lumber then to finish it. This evidence was competent and admissible for the purpose of fixing knowledge upon the mine operator of the condition of the ladderway. The mine foreman was his representative and vice principal and to show that a statement was made long enough before the death of the miner for the platform to have been constructed.

Parrish v. Richardson, — N. C. —, 97 Southeastern 225, p. 226.

COMMON-LAW COUNT—INSTRUCTIONS.

Under a common-law action charging that a coal-mine operator had negligently failed to furnish an injured miner a reasonably safe place in which to work, the mine operator is entitled to an instruction to the effect that if the miner was engaged in making a dangerous place safe then the rule requiring the employer to furnish a safe place did not apply.

Seagle v. Stith Coal Co., — Ala. —, 79 Southern 301, p. 303.

INVITEE—WHO IS—DUTY OWING.

A coal-mine operator does not owe the duty of furnishing a safe place to a person in his mine under an invitation of an employee of an independent contractor, and such person can not hold the mine operator liable on the ground that he was an invitee on the premises and that the operator owed him a duty as such.

Seagle v. Stith Coal Co., — Ala. —, 79 Southern 301, p. 303.

MINER REMOVING GOB—FALL FROM ROOF.

A coal miner was directed by the mine foreman or superintendent to remove a lot of clay and dirt, the result of a landslide that had fallen upon the mine track. This was not necessarily dangerous work and the miner was not thereby injured. He was injured by a fall from the roof upon which he was not working and with which he had nothing to do. The clay and dirt were being removed preparatory to timbering the roof and the miner was entitled to a safe place in which to work, as he was not engaged in making a dangerous place safe.

Hazard Coal Co. v. Wallace, — Ky. —, 205 Southwestern 692, p. 693.

SIGNAL DEVICE—"SKIDDOW" BELLS.

Mine operators in a certain mining district in raising ore in shafts of a depth of 200 feet or more usually installed and used a signal device known as a "skiddow" bell, by which the hoisterman could signal the men at the bottom of the shaft in case rock or material started to fall from the top of the shaft. A mine operator may be liable for injuries to a miner working in the bottom of a shaft caused by rock or material falling from the tub while being hoisted where no skiddow bell had been installed, where it appears that the hoisterman could have warned the miner by means of such a bell in time to have permitted him to escape the peril, if one had been installed.

Honey v. St. Regis Min. & Smelting Co., — Mo. —, 205 Southwestern 93, p. 95.

DUTY TO PROVIDE SAFE APPLIANCES.

LATENT DEFECTS—PLEADINGS.

The fact that defects in an appliance causing an injury are latent and the employer by the exercise of ordinary care could not have ascertained or known of such defects in time to avoid the resultant injury, is available as a defense; but they are not essential to the sufficiency of a complaint where the employer is charged with negligently furnishing in the first instance defective tools, implements,

appliances, or providing a defective or unsafe place in which the employee is to work.

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 North-eastern 664, p. 667.

EMPLOYER FURNISHING DEFECTIVE APPLIANCES—KNOWLEDGE OF DEFECTS—PLEADING.

A complaint by a 16-year-old car driver for damages for injuries received while driving in a mine alleged that the mine operator carelessly and negligently provided him with a mule that was unsafe, dangerous, lame, mean, unreasonably slow, vicious, balky, and wholly unfit for such work, all of which the mine operator knew in time to have discontinued the use of such mule in time to have avoided the injuries complained of. The complaint also averred that the mine operator furnished the driver the car he was required to drive with an unfit and defective tail chain with knowledge of its defects and unfitness. Under these allegations the complainant was not required to aver knowledge of the mine operator of the defects complained of or that he knew of them in time to replace or repair the same before the injury. The rule is that where an employer constructs or furnishes defective and unsuitable places or tools, implements, or appliances, to be occupied or used by the employee, he is presumed to know of such defects or unfitness and averments of knowledge are not required.

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 North-eastern 664, p. 667.

UNSAFE APPLIANCES—LIABILITY.

In occupations attended with danger to the employees, such as hoisting rock and ore in a shaft in a common bail or bucket, the operator must use such methods and appliances as are practical and readily attainable and such as are in common use in doing similar work or show that other means or appliances equally efficient were used by him; and a failure to do so when the methods and appliances used are not reasonably safe is a basis for actionable negligence.

Honey v. St. Regis Min. & Smelting Co., — Mo. —, 205 Southwestern 93, p. 95.

FAILURE TO SUPPLY—KNOWLEDGE OF PROBABLE CONSEQUENCES.

A mine or quarry operator who places in the hands of or authorizes the use by an employee of a dangerous instrument or article under such circumstances that he has reason to know that it is likely to produce injury is liable for the consequences.

De Nardo v. Stephens-Jackson Co., — Pa. —, 104 Atlantic 584, p. 585.

HAZARDOUS EMPLOYMENT—DUTY AS TO SAFE TOOLS.

A quarry operator is engaged in a hazardous business and it is his duty to furnish such tools as will so far as is reasonably practical protect his employees from danger.

De Nardo v. Stephens-Jackson Co., — Pa. —, 104 Atlantic 584, p. 585.

DEFECTIVE DRILL—FAILURE TO INSPECT.

A miner was injured while using a defectively welded steel drill. If the miner did not know that the drill was defectively welded and if by the exercise of reasonable care and inspection the mining company should have discovered that the welded steel was weak in that the weld was defective, then negligence could be attributed to the mine operator.

Gold Hunter Min. & Smelting Co. v. Bowden, 252 Federal 388, p. 390.

MULE—UNFITNESS AS AN APPLIANCE.

In an action for damages for injuries the complaint averred that the plaintiff was a boy 16 years of age and was employed as a driver in the defendant's mine, whose duty it was to drive a mule hitched to the coal cars hauling coal out of the mine. The complaint also averred that the mine operator carelessly and negligently provided him with a mule that was unsafe, dangerous, lame, mean, unreasonably slow, vicious, balky, and wholly unfit for such work. The proof tended to show that the mule the boy was driving when injured had been used in the defendant's mine for some seven years before the accident; that one of its hoofs had been partly torn off, that it had been operated on by a veterinary surgeon, was lame, deaf, old, slow, and hard to manage, and that no one had told the boy anything about the mule or how to handle the car when he began to drive. This evidence is sufficient to sustain the allegation of the unfitness of the mule as an appliance to be used by the driver and from which the jury was warranted in inferring knowledge of the facts on the part of the mine operator. Aside from the proof of unfitness, the mine operator is presumed to know the defective conditions of appliances furnished an employee.

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 Northeastern 664, p. 669.

See Arkansas Smokeless Coal Co. v. Pippins, 92 Ark. 138, 122 Southwestern 113.

Wilson v. Saux Consolidated Min. Co., 16 Utah 392, 52 Pacific 626.

"TAIL CHAIN" AS AN APPLIANCE.

A tail chain by which a mule is hitched to coal cars in hauling cars out of a mine is an appliance within the meaning of the law.

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 Northeastern 664, p. 669.

DUTY TO WARN OR INSTRUCT.

LIABILITY FOR FAILURE TO WARN.

In an action by a trip driver, a boy 17 years old, for damages for injuries, the charge on which recovery was based was that the mine operator did not give him proper instructions relative to getting on and off moving trips. The proof showed that the driver had worked in the mine for two years prior to the accident and was accustomed to getting on and off moving cars. The proof showed that it was safer to get on the rear end of a moving car than on the front end, even of cars connected together in a trip, and the brakes to be operated were on the rear of the cars. The trip driver was injured in attempting to get on the front end of a car in a moving trip of cars. Notwithstanding his allegation that he was exercising "due care," there was no evidence indicating that his injuries were the result of a lack of instructions by the mine operator, and the operator was not shown to have been negligent in any respect.

Walsky v. H. C. Frick Coal Co., — Pa. —, 104 Atlantic 798.

HAZARDOUS UNDERTAKING—EMPLOYER'S KNOWLEDGE OF DANGER.

A miner employed by a coal company to trim the cars of coal while loading was required to stand on the cars and separate stone and other foreign material from the coal and trim them up neatly as the coal was emptied into the cars. The place where the miner worked was dangerous, and the coal company and the railroad company that furnished empty cars and removed loaded cars each knew of the danger and had adopted means to obviate it. The coal company, to prevent injury under such circumstances, made a rule requiring notice to its employees when a car was to be moved, and the railroad company adopted the rule of the mine operator. In the instant case neither the coal company nor the railroad company gave the miner any warning of the placing of a car and by reason of which the miner was injured. The failure to give the warning made both companies liable in an action by the miner for injuries sustained.

Johnson v. Waverly Brick & Coal Co., — Mo. —, 205 Southwestern 615, p. 616.

WARNING OF ADDITIONAL DANGERS.

A mine owner is bound to give an employee, working in a place which may become dangerous by reason of perils arising from the doing of other work pertaining to the employer's business different from that in which the particular employee is engaged, such warning of the additional danger as will enable him, with the exercise of reasonable care, to avoid the danger; and this duty can not be delegated so as to free the mine operator from liability for negligence.

Asbury v. Hecla Min. Co., — Wash. —, 175 Pacific 179, p. 181.

FAILURE TO WARN—SUDDEN DANGER—STARTING MACHINERY.

A carpenter employed in a smelting plant was engaged in constructing a form for holding and hardening cement as a pier for supporting an ore drier. The form was constructed in close proximity to the ore kiln and to the track upon which ran and moved a rabble rake used for the purpose of stirring the hot ore. When the employee began his work the ore rake was not in motion, and it was the custom of the operator or the person operating the rake to warn the employees when the rake was started. An ore crusher in operation near by made a loud noise, while the rabble rake was operated with little or no noise. While the employee was so engaged the ore rake was set in motion without warning, and he was caught between the hot rake and the form and suffered injuries for which he sued. The failure of the operator to warn the employee of the starting of the rabble rake was negligence, for which he was liable in damages for the injuries occasioned thereby.

Athletic Min. & Smelting Co. v. Sharp. — Ark. —, 205 Southwestern 695, p. 698.

DUTY TO PROMULGATE RULES.

RULES TO REGULATE EMPLOYMENT—FAILURE TO PROMULGATE—LIABILITY.

Generally an employer owes to his employees the duty to promulgate and enforce reasonable rules and regulations for their guidance and protection; but in the absence of evidence showing that such rules would be useful and feasible under similar circumstances, the employer can not be held negligent in failing to promulgate rules. A danger may be apparent with or without rules and regulations, and the appearance of danger may be obvious or patent, but existing rules and regulations may neither remove nor lessen the risk.

Suttle v. Hope Nat. Gas Co., — W. Va. —, 97 Southeastern 429, p. 434.

PROOF OF NECESSITY FOR RULES.

The rejection or exclusion of testimony offered to show the feasibility and necessity for the promulgation of rules and regulations for the protection of employees while engaged in the performance of dangerous work is erroneous.

Suttle v. Hope Nat. Gas Co., — W. Va. —, 97 Southeastern 429, p. 434.

INSTRUCTIONS AS TO RULES—CHARACTER DEFINED.

An instruction on the trial of a case for damages for the death of an employee caused by the alleged negligence of the employer in that he failed to promote rules for the regulation of the business,

imposing upon the employer the duty to promulgate and enforce rules and regulations for the protection of his employees should prescribe with reasonable definiteness the nature of the rule sought to be required and not leave to the jury's conjecture the determination of their character.

Suttle v. Hope Nat. Gas Co., — W. Va. —, 97 Southeastern 429, p. 435.

DELEGATION OF DUTY.

NONDELEGABLE DUTY.

It is a masterial duty to provide employees, including miners, a safe place to work, and this duty is one which can not be delegated in such a way as to release the master or mine operator from responsibility for failure to perform it.

United Verde Copper Co. v. Kuchn, 253 Federal 425, p. 426.

OPERATOR'S ASSURANCE OF SAFETY.

MINER'S KNOWLEDGE OF DANGER—RELIANCE UPON ORDERS OF EMPLOYER.

A miner working in a mine may act under the direct orders or in the business of his employer and recover for resultant injuries unless the danger was so obvious that an ordinarily prudent man would not have undertaken to obey the order. This rule is based upon the idea that an employee may rely upon the order of the employer, and his superior knowledge, as an assurance that the place is safe.

Hazard Coal Co. v. Wallace, — Ky. —, 205 Southwestern 692, p. 693.

CONTRACTS RELATING TO OPERATIONS.

CONTRACT RELATING TO SAFETY OF WORKING PLACE—EVIDENCE.

In an action by a miner for damages caused by the alleged negligence of a mine operator in failing to make safe the miner's working place, a written contract between the mine operator and the miner to the effect that the price paid the miner for mining coal was intended to cover compensation for all work done in making the miner's working place safe, was not admissible in evidence because it had not been pleaded as a defense to the action.

Creek Coal Min. Co. v. Paprotta, — Okla. —, 175 Pacific 235, p. 237.

AGREEMENT TO ARBITRATE—EFFECT ON RIGHT TO SUE.

A contract for operating a coal mine and for mining and removing coal provided, among other things, that the question of whether or not the operator left unmined any available, minable, or merchantable coal was to be submitted to arbitrators to be selected by the parties. The operator bound himself to pay the stipulated royalty on the

amount of unmined merchantable coal as determined by the arbitrators. Where such a contract provides that the award of the arbitrators shall be final as to the amount and that no action or suit shall be maintained until arbitration is had, then an award is a condition precedent to the right to sue. But in the absence of such a provision, either expressed or necessarily implied, the agreement for the submission to arbitrators is collateral and independent, and while a breach of the agreement will support a separate action it can not be pleaded in bar to an action upon the principal contract. Generally nothing would be determined by an award except the exact question agreed to be submitted to arbitration. The contract involved did not in express terms or by necessary implication make the submission to arbitration a condition precedent to the right to sue, neither did it limit the amount of recovery in the courts to the arbitrators' findings as to the tonnage of coal unmined, and that should have been mined, from which a condition precedent might necessarily be implied.

Flavelle v. Red Jacket Consolidated Coal & Coke Co., —W. Va. —, 96 South-eastern 600, p. 602.

AGREEMENT TO ARBITRATE—CONDITION PRECEDENT.

A provision in a contract or a lease of a coal mine that certain difficulties arising under it should be submitted to arbitrators to be selected by the parties will not prevent the lessor and mine owner from maintaining a suit in the first instance to enforce his rights under the contract or lease, except where an award of the arbitrators chosen is made a condition precedent to the right to sue either by the express provisions of the contract or by conditions necessarily implied from its terms.

Flavelle v. Red Jacket Consolidated Coal & Coke Co., —W. Va. —, 96 South-eastern 600, p. 602.

AGREEMENT TO ARBITRATE—EFFECT ON MINING OPERATIONS.

A contract or lease by which the owner of a coal mine contracted with the lessee to mine and remove the coal, specified generally the methods of carrying on the operations and the royalties to be paid on different grades of coal. The contract or lease provided for the mining and removal of all merchantable coal, and expressly provided that the question of whether or not merchantable or minable coal was left in any particular abandoned room should be submitted to arbitrators selected by the parties and the lessee should pay royalties on the amount of unmined merchantable coal found and determined by the arbitrators. The parties did not intend to give these requirements a conclusive effect upon all the provisions of the contract, but they did intend to make the report of the arbitrators

final and conclusive upon the necessity for leaving unmined any available coal. The arbitration provided for is a condition precedent to the right to maintain an action to recover royalties for any unmined merchantable coal. But there is no declaration of an intention to apply this provision to operations of the mine as a whole or any part of it other than that so definitely prescribed.

Flavelle v. Red Jacket Consolidated Coal & Coke Co., — W. Va. —, 96 South-eastern 600, p. 601.

SALE OF WELL DRILLING TOOLS—FRAUD.

An action for damages claimed on the alleged ground that the plaintiff was induced to sell to the defendant an outfit of well-drilling tools at an inadequate price when he was intoxicated and incapable of transacting business, can not be maintained where the proof fails to show the value of the well-drilling tools and where there was neither allegation nor proof that the defendant promised to pay the plaintiff any sum more than that paid and where the plaintiff admitted that he was not intoxicated at the time he executed the contract of sale.

Smith v. Rock Oil & Gas Co., — Kan. —, 175 Pacific 378, p. 379.

METHOD OF OPERATING.

RESERVATION OF MINERALS—USE OF SURFACE—CUSTOMARY METHODS.

The bare right given to work a mine under a conveyance or reservation of the minerals with such right, carries with it the right to use so much of the surface as is reasonably necessary. The mine owner has the right to enter and take and hold possession even as against the owner of the soil, and to use the surface so far as may be necessary in carrying on mining operations, even to the exclusion of the owner of the soil. What is necessary and reasonable under such circumstances may be determined by reference to what is customary.

Oberly v. H. C. Frick Coke Co., — Pa. —, 104 Atlantic 864, p. 865.

SURFACE RIGHTS.

Where the right to mine and remove minerals is granted, the surface rights and the incidental rights, such as that to use shafts, whether expressed or left to implication arising from the grant, can be used only for the purpose of mining under the particular premises conveyed and not as a means of mining under and removing minerals from other lands. The latter is a privilege or easement that must be granted in express terms.

Oberly v. H. C. Frick Coke Co., — Pa. —, 104 Atlantic 864, p. 865.

INJURY TO LAND—MEASURE OF DAMAGES.

A land owner sued an ore washer company for damages for the deposit of muck, mud, and other foul substances caused to be floated down and deposited upon the complainant's land. He alleged that as the proximate consequence thereof the complainant lost the use of his residence, was deprived of his land for farming purposes and other domestic uses, for stock raising, truck farming, and that the lands had been permanently damaged and deteriorated in value. On the trial of the case the court properly refused to instruct the jury at the request of the defendant to the effect that the measure of damages for temporary injury to the land was the difference in rental value, plus the reasonable expense of restoring the premises to their former condition. The request was properly refused because there was no evidence as to the rental value or to the expenses of the restoration of the land, and for the further reason that the complainant's claim included damages for crops destroyed and permanent injury to the land.

Tennessee Coal, Iron, etc., Co. v. Bunn, — Ala. —, 79 Southern 360, p. 362.

INJURY TO LAND—INJURY INCREASED WITHIN LIMITATION PERIOD.

A land owner in an action against an ore washer company that operated its plant on a creek above the plaintiff's land, alleged that his land had been injured by the washer company floating down thereon a large body of water, muck, mud, rock, and other debris, forming a large pond, overflowing a large part of complainant's land under cultivation; that said acts had been done for one year next preceding the filing of the claim; that by reason of the wrongful acts of the defendant, the complainant lost the use of his residence, was deprived of his lands for farming purposes and other domestic uses and his lands had been greatly and permanently damaged and lessened in value. These averments show that the washer company had added to the injury of the complainant's land during the year preceding the commencement of the suit, and for that increase of injury the washer company was answerable whatever else of permanent injury the washer company may have caused during the preceding period of ten years.

Tennessee Coal, Iron, etc., Co. v. Bunn, — Ala. —, 79 Southern 360, p. 361.

DESTRUCTION OF SURFACE SPRINGS.

A deed granting mining rights expressly absolved the grantee from liability for injury to or destruction of springs on the surface as an incident of the removal of the coal. Such a covenant justifies

the injury or destruction of springs at such times as the mine operator may see fit to mine and take out the coal.

Preston County Coke Co. v. Elkins Coal & Coke Co., — W. Va. —, 96 Southeastern 973, p. 976.

GRANT OF WAYS AND OPENINGS—CONSTRUCTION.

A conveyance of coal granted the free and uninterrupted right-of-way into, over, and under the land at such points and in such manner, for such ways, tracks, roads, etc., as may be necessary and proper for the purpose of ventilating, draining, digging, and operating and shipping and carrying away the coal. This grant does not limit the owner of the coal in the operation of his mine to a single way or opening. Under such a grant, ways and openings that are appropriate and useful and convenient in the mining of the coal are legally necessary and proper.

Preston County Coke Co. v. Elkins Coal & Coke Co., — W. Va. —, 96 Southeastern 973, p. 975.

BORE HOLE FROM SURFACE—VENTILATION OF MINE.

The removal of gas is a necessary incident to the mining of coal so that mining operations may be carried on with safety, and this right is implied and is incidental to every grant of minerals. Where in mining operations gas accumulated in the mine or above the coal that can not be removed by the ordinary means of ventilation, the mine owner and operator may enter upon the surface and drill a bore hole of sufficient size from the surface to the accumulation of gas to release the same and to make the mining operations safe, where such bore hole is necessary to the proper ventilation of the mine and to the mining of coal immediately under the particular surface of land.

Oberly v. H. C. Frick Coke Co., — Pa. —, 104 Atlantic 864, p. 866.

TIMBER FOR MINING PURPOSES—DESIGNATION OF SIZE—EFFECT AND RIGHTS.

A mining lease gave the lessee the right to cut and use such timber on the leased land over twenty inches in diameter one foot from the ground as might be needed in mining operations. The lease reserved to the lessor and his assigns the right to cut and remove the larger timber. The prescription of the size of the timber the lessee was permitted to take applies and is determinative of his right to cut and use timber as of the date on which such cutting and use became necessary in the process of mining. By the terms of the lease he was not entitled to take timber of a larger size by reason of growth between the date of the lease and the date of necessity for cutting.

Raleigh Coal & Coke Co. v. Mankin — W. Va. —, 97 Southeastern 299, p. 301.

TIMBER FOR MINING PURPOSES—DUTY OF OPERATOR TO PROTECT.

A deed conveying the coal underlying a certain tract of land conferred upon the grantee the right to cut and use for mining purposes the timber on the land overlying the coal. Under such a deed, the timber remains the property of the grantor or his assigns until the coal-mine operator exercises his right to cut and appropriate it to the use contemplated by the deed and until so cut and appropriated the mine operator owes the same duty to use ordinary care not to damage or injure that he would have owed if the deed had conveyed to him no permissive right thereto.

Godfrey v. Weyanoke Coal & Coke Co., — W. Va. —, 97 Southeastern 186, p. 189.

Raleigh Coal & Coke Co. v. Mankin, — W. Va. —, 97 Southeastern 299.

ANNOYANCE FROM COAL DUST AND DÉBRIS.

Under a grant of underlying coal with the right for such ways, tracks and roads as may be necessary and proper for ventilating, draining and hauling the coal, the mere annoyance to tenants of the surface owner from coal dust and débris or the destruction of a small garden would not be sufficient to prevent the operator of the coal mine from opening and using a second opening and way over which to haul the coal mined.

Preston County Coke Co. v. Elkins Coal & Coke Co., — W. Va. —, 96 Southeastern 973, p. 976.

OPERATION OF CARS—VIOLATION OF RULE—PROOF OF CUSTOM.

A coal-mining company and a railroad company furnishing it cars for loading and hauling its coal, each had a rule to the effect that warning was to be given to persons engaged in loading or trimming cars of coal, when other cars were to be switched or placed. In placing an empty car to be loaded it was so pushed or bumped against a car in process of loading as to throw the miner trimming the car under the wheels and cause the injuries for which he sued. Neither the coal company nor the railroad company can escape liability for so placing the car without warning, by proof that they had habitually neglected to give any warning under such circumstances. No custom or usage can make that lawful which is necessarily dangerous and it can not be said that to push cars back against one upon which a miner was at work without warning was not unnecessarily dangerous.

Johnson v. Waverly Brick & Coal Co., — Mo. —, 205 Southwestern 615, p. 617.

GRADES OF COAL—LESSOR ESTOPPED.

A coal-mining lease provided that the lessee should pay to the lessor a stated royalty per ton for the coal mined of a certain designated quality and provided for a less royalty per ton for "slack." The lease also reserved to the lessor the right to inspect the mining operations. The lessor for a period of several years frequently and often daily was present either in person or by his agent while the mining operations were in progress and presumably was familiar with the screens used to separate the low from the high quality of coal. Under such circumstances, the lessor can not after such long period of operations be heard to complain that coal sold by the lessee as "slack" and accounted for as such and the royalty thereon received by him was in fact coal of a higher quality and should have been accounted for at the rate stipulated for the higher grade coal.

Flavelle v. Red Jacket Consolidated Coal & Coke Co., — W. Va. —, 96 South-eastern 600, p. 605.

SALE OF NATURAL GAS FOR GASOLINE PURPOSES—LIABILITY FOR DECREASED PRODUCTION.

The lessee of an oil and gas lease as the owner of oil wells producing natural gas, by a written contract sold to a third person all gas produced from the oil wells in operation by such lessee as well as the gas from wells thereafter to be drilled, reserving to the lessee, the seller, enough gas to run the engines employed upon the leased premises. The contract was to continue so long as the purchaser, out of the gas produced, was able to manufacture gasoline in paying quantities. In the operation of its oil wells the lessee, the seller of the natural gas, installed and used a certain patented process to accelerate oil production from the wells, and by the use of this process the vaporous properties of the gas were destroyed by absorption or combination with the oil and the natural gas became unfitted for use in the manufacture of gasoline, to the loss and damage of the purchaser of the natural gas. The lessee of the oil lease by the contract of sale did not restrict his right to develop and exploit the oil field and the contract of sale of the natural gas was only an incident to the use of the oil wells and subordinate to their development for oil. The lessee under the oil and gas lease owed the duty to the lessor to use all reasonable means to maintain the flow of oil and the right of the purchaser of the natural gas was subordinate to that of the original lessor of the oil and gas lease. In the development and production of oil, the lessee did not debar himself from the use of such means as science and experience have proved to be advantageous although they resulted in actual loss and damage to the purchaser of the natural gas.

Beeson v. Drake Oil Co., — W. Va. —, 97 Southeastern 414, p. 416.

MINE FOREMAN, VICE PRINCIPAL, SUPERINTENDENT—RELATION AND NEGLIGENCE.**AUTHORITY—QUESTION OF FACT.**

The question as to whether or not a person employed by an oil company as a vice principal, who was with another employee engaged in lighting fires under oil stills, is a vice principal or a fellow servant is for the jury to determine as one of fact.

Bradshaw v. Standard Oil Co., — Mo. App. —, 204 Southwestern 831, p. 832.

DUAL CAPACITY.

The doctrine of dual capacity is the law in Texas. Under this rule a person may act as a vice principal of an oil company and also as a fellow servant with other employees. It is the character of the act and not the rank of the servant which determines the liability or nonliability of the employer. Under the doctrine of dual capacity the question is: Was the vice principal at the time exercising some authority vested in him as such, or was he in the performance of a mere manual act of service incident to the common employment?

Bradshaw v. Standard Oil Co., — Mo. App. —, 204 Southwestern 831, p. 832.

EVIDENCE—STATEMENTS OF FOREMAN OR VICE PRINCIPAL.

The statements of a foreman of a coal company who was the vice president of the company as to why and how certain cars were moved and set for loading and how a miner came to be injured are admissible in evidence in an action by the injured miner for damages.

Johnson v. Waverly Brick & Coal Co., — Mo. —, 205 Southwestern 615, p. 618.

DIRECTIONS OF GENERAL FOREMAN—ONE EMPLOYEE TO DIRECT ANOTHER.

A general foreman of the Standard Oil Company directed an employee to tell another employee what to do and thereupon told the second employee to do as the first employee told him to do. This order made the first employee a vice principal of the defendant oil company in the particular work to be done, and the oil company was liable for injuries resulting to the second employee from the negligence of the first.

Bradshaw v. Standard Oil Co., — Mo. App. —, 204 Southwestern 831, p. 832.

FELLOW SERVANTS—RELATION—NEGLIGENCE.**WHO ARE.**

The driver of a mule train hauling cars in and out of a mine is not a fellow servant with a timberman whose duty it was to do the necessary timbering in the mine; and the driver may recover for an injury

due to the negligence of the timberman in leaving the timber truck on the track over which the car driver passed and that was used for the purpose of hauling ore out of the mine.

Asbury v. Hecla Min. Co., — Wash. —, 175 Pacific 179, p. 180.

DUTY OF EMPLOYER IN SELECTING.

It is the duty of an employer and of a coal-mine operator to exercise reasonable care in the selection and employment of competent fellow servants.

James v. Winnifred Coal Co., — Iowa —, 169 Northwestern 120, p. 122.

DUTY OF EMPLOYER TO ASCERTAIN THE COMPETENCY OF SERVANTS.

It is the duty of a coal-mine owner to exercise reasonable care to ascertain whether a servant he employed was competent to operate a mining machine. This duty is due to other employees working about the machine, but whether such care had been exercised was a question of fact for the jury to determine.

James v. Winnifred Coal Co., — Iowa —, 169 Northwestern 120, p. 124.

INJURY DUE TO INCOMPETENCY—BURDEN OF PROOF.

A miner in an action for damages for injuries due to the alleged incompetency of a fellow servant in that he was not competent to run and operate a coal-cutting machine that was operated by compressed air and electricity, has the burden to show by a fair preponderance of the evidence that the fellow servant was incompetent; that such incompetency was known to the mine operator, or by the exercise of reasonable care it should have been known to him and that such incompetency was the proximate cause of the injury.

James v. Winnifred Coal Co., — Iowa —, 169 Northwestern 120, p. 123.

INCOMPETENCY OF SERVANT—MEANING.

Incompetency of a servant in the law of master and servant means the want of ability adapted to the performance of a task either because of lack of experience, natural qualifications, or deficiency of disposition to use one's ability and experience properly.

James v. Winnifred Coal Co., — Iowa —, 169 Northwestern 120, p. 124.

INCOMPETENCY OF SERVANT—QUESTION OF FACT.

In an action by an injured miner for damages for injuries due to the alleged incompetency of a fellow servant, the question of the incompetency of the servant is one of fact to be determined by the jury under proper instructions.

James v. Winnifred Coal Co., — Iowa —, 169 Northwestern 120, p. 124.

INCOMPETENCY—PROOF.

Proof of a single accident due to the alleged incompetency of a fellow servant would not make out a *prima facie* case of incompetency, but the facts and circumstances surrounding the occurrence may tend strongly to so indicate and may be considered by a jury upon the question of the incompetency of the servant.

James v. Winnifred Coal Co., — Iowa —, 169 Northwestern 120, p. 124.

FELLOW SERVANT—NEGLIGENCE—LIABILITY OF MASTER.

A coal-mine operator is not liable to one miner for injuries caused by the negligence of a fellow miner.

James v. Winnifred Coal Co., — Iowa —, 169 Northwestern 120, p. 121.

NEGLIGENCE OF TIMBERMAN—LIABILITY OF OPERATOR.

A miner sued the mine operator for damages for injuries caused by the negligent acts of a timberman in prying stones from the roof of the room where a miner was working and knocking props from under the stones, thereby permitting the stones to fall and producing the injuries complained of. On the trial of the case the court instructed the jury in effect that if the timberman warned the plaintiff to seek a place of safety and he failed to do so he could not recover unless it appeared that the timberman negligently knocked the props from under the roof they were supporting or did something else causing the roof to fall without giving the miner time to reach a place of safety. This instruction was a correct statement of the law and the fact that the timberman warned the miner to seek a place of safety was alone conclusive evidence that he regarded the place as dangerous and it was his duty to wait until the miner had reached a place of safety before doing anything that in any way endangered his life or subjected him to injury.

Creek Coal Min. Co. v. Paprotta, — Okla. —, 175 Pacific 235, p. 238.

PROOF OF INJURY INSUFFICIENT TO SHOW NEGLIGENCE.

An employee in a mine was engaged in assisting in the extraction of ore while at the same time another miner was engaged in breaking ore in the mine with a sledge hammer some 10 feet away. While so engaged the miner using the sledge hammer struck a piece of rock or ore in the direction of the complainant and a small piece of the ore or rock, as the rock was being broken up, struck the complainant in the eye, inflicting the injury complained of. There was no evidence to show that the miner using the sledge hammer was careless in the manner in which he broke the rock, as in breaking any rock with a hammer pieces are likely to fly in various directions. There

was no evidence that the place in which the complainant was working was in itself unsafe or that the work involved any hazards not usual or incidental to the risk of the employment the complainant was engaged in.

Suborich v. Alaska United Gold Min. Co., 251 Federal 885, p. 886.

MINER'S WORKING PLACE—SAFE PLACE.

OPERATOR'S DUTY TO EXERCISE CARE—KNOWN DANGER.

In hoisting ore in a shaft some 200 feet deep the tubs or bails used did sometimes dump and throw rock down the shaft and there was a known danger of rocks being thus thrown down the shaft and likely to injure the miners working at the bottom of the shaft. It was the operator's duty in such case to use all reasonable means to guard against every known danger. A known danger may exist though the actual occurrences may be at long intervals or even never, but it is the duty of an operator under such circumstances to use reasonable care to make the miner's working place safe.

Honey v. St. Regis Min. & Smelting Co., — Mo., —, 205 Southwestern 93, p. 95.

DUTY OF INSPECTION NOT INFERRED.

It may be the duty of a timberman in a mine to prepare and make safe any place which appeared to him to be dangerous; but unless there was a positive duty imposed upon him to inspect in order to ascertain if a place was dangerous such duty should not be inferred.

Dovich v. Chief Consolidated Min. Co., — Utah —, 174 Pacific 627, p. 632.

ASSUMPTION OF EMPLOYER'S DUTY—INSPECTION NOT REQUIRED—DANGERS OBVIOUS.

A miner employed in a coal mine has the right to assume that the mine operator has used ordinary care to make his working place reasonably safe and the miner is not required to inspect the place before going to work in order to ascertain whether it is safe. If its dangerous character is so obvious that a person of ordinary understanding and judgment could by the exercise of ordinary care discover the danger in time to prevent the injury there can be no recovery.

Hazard Coal Co. v. Wallace, — Ky. —, 205 Southwestern 692, p. 693.

CONTRIBUTORY NEGLIGENCE OF MINER.

PLEADING—DEFENSE.

A complaint for damages by an injured miner averred the negligence of the coal-mine operator and expressly stated that the injury was without any fault on the part of the complainant. Under these allegations the question whether the complainant was guilty of any such negligence, whether common law or statutory, as would preclude a recovery, was a matter of defense.

Jewel Ridge Coal Corp. v. Keen, — Va. —, 96 Southeastern 767, p. 763.

QUESTION OF LAW AND FACT.

A miner standing on a car being loaded with coal and engaged in removing stones and foreign substances while in process of loading, was not guilty of such contributory negligence as to prevent a recovery as a matter of law by standing with his back to a cut of cars that were being switched and set on the track or switch on which the coal car was standing; and especially where the miner did not know that the cars were approaching and where under the rules of the railroad company and the custom of the coal company he had no reason to apprehend that any cars would be set without first giving him notice.

Johnson v. Waverly Brick & Coal Co. — Mo., —, 205 Southwestern 615, p. 617.

EXERCISE OF CARE.

A mine employee working in a mine must continue at all times to exercise ordinary care for his own safety. A miner or a timberman, at the time of receiving the injury complained of was engaged in work that tended to make the place insecure, and it was his duty to exercise ordinary care to discover the danger and to protect himself from injury, and failing to do this he was guilty of contributory negligence.

Dovich v. Chief Consolidated Min. Co., — Utah —, 174 Pacific 627, p. 632.

DISTINCTION BETWEEN CONTRIBUTORY NEGLIGENCE AND ASSUMED RISK.

There is a well-defined distinction between contributory negligence and assumed risk. The defense of assumed risk and contributory are separate and independent, the former arising out of contract, while the latter does not.

Athletic Min. & Smelting Co. v. Sharp, — Ark. —, 205 Southwestern 695, p. 698.

SAFE AND DANGEROUS METHOD—CHOICE—INSTRUCTION.

In an action by a miner for damages for injuries caused by being run over by a motor car an instruction requesting the court to charge the jury to the effect that if the injured person advisedly took a dangerous way when a safe way was open to him was correctly refused because it did not include in the hypothesis the essential factor that the plaintiff was aware that of the "ways" described in the request one was safe and the other unsafe.

Montevalo Min. Co. v. Underwood, — Ala. —, 79 Southern 453, p. 455.

DISCOVERY OF PERIL—DUTY TO AVOID INJURY.

Any initial negligence on the part of a miner injured in the course of his employment by which he placed himself in the position of peril will not bar his right to recover for injuries for a wrong negligently caused or permitted after the discovery of his peril.

Montevalo Min Co. v. Underwood, — Ala. —, 79 Southern 453, p. 455.

FREEDOM FROM CONTRIBUTORY NEGLIGENCE.

UNKNOWN DANGERS.

The driver of a mule car hauling ore out of a mine on the track used for that purpose can not be charged with contributory negligence in failing to avoid a collision with a timber truck left on the track by the timberman where the truck was just beyond a curve and could not be seen and where in many months' operation, going over the track several times each day, no such truck was left upon the haulage track with one exception, and the driver was then promised that it should never be done again.

Asbury v. Hecla Min. Co., — Wash. —, 175 Pacific 179, p. 181.

USE OF IRON TAMPING BAR.

An illiterate foreign laborer is not to be charged with contributory negligence as a matter of law and a recovery for injuries defeated because he used an iron tamping bar that caused an explosion resulting in his injury, where the operator knowingly permitted the tamping to be done with iron bars and failed to supply wooden bars or other implements for such purpose and where the injured employee had never been warned and did not in fact know of the danger in using the iron bar.

De Nardo v. Stephens-Jackson Co., — Pa. —, 104 Atlantic 584, p. 585.

WILFUL WRONG—EFFECT OF CONTRIBUTORY NEGLIGENCE.

In an action by a miner for injuries caused by being run over by a motor car on a tram track, it was charged in the complaint that the motor car was wantonly or intentionally caused or allowed to run over or against the plaintiff. As against such a charge contributory negligence on the part of the injured person will not defeat a recovery.

Montevalo Min. Co. v. Underwood, — Ala. —, 79 Southern 453, p. 455.

IMPROPER MINING OF ONE MINERAL STRATUM—EFFECT ON RIGHT OF SUPPORT.

The owner of land in which there was an underlying stratum of cement rock some 75 feet below the surface conveyed to an adjoining land owner a vein of coal lying some 500 feet below the cement-rock ledge, with the right to mine and remove the coal "without entering upon or injuring the surface thereof." This imposed upon the coal grantee the legal duty of so mining the coal as not to injure the surface, and the surface in this sense included the cement-rock ledge as well as the actual soil surface. The fact that the owner of the limestone ledge did not in some of his mining operations employ the best and most approved methods of mining, or that in some parts of his mine there was negligence in conducting the mining operations, would not constitute such contributory negligence as would defeat his right to injunctive relief against the coal mine operator, where the latter was charged with a violation of his legal duty to maintain the necessary support and where the coal mining had been so conducted as to cause actual subsidence in the mine of the cement-rock ledge owner, even if the mining methods of the cement mine had been above criticism and where the subsidence was the wrongful cause of the injury complained of—the sole proximate cause.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 116.

SUPPORT OF SURFACE—BUILDINGS ERECTED AFTER LEASE.

The act of removing all support from the superincumbent soil is, *prima facie*, the cause of the subsequent subsidence of the surface; but if the subsidence is caused by the weight of buildings erected subsequent to the execution of a lease of the mine this is in the nature of contributory negligence and may be proved in defense. But the mere presence of a building or other structure upon the surface does not prevent a recovery for subsidence of the surface, unless it be shown that the subsidence would not have occurred except for the presence of the building. The obligation to support extends only to the soil in its natural state and there is no obligation on the mineral

owner to support additional buildings on the surface. But if the subsidence would have resulted if no buildings had been placed on the surface, then the act creating the subsidence is wrongful and the mine owner becomes liable for all damages resulting therefrom, both to the buildings and to the land itself.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 115.

See *Brown v. Robin*, 4 Hurlstone & Norman 185.

Hamer v. Knowles, 6 Hurlstone & Norman 459.

ASSUMPTION OF RISK.

RISKS ASSUMED.

DANGERS INCIDENT TO EMPLOYMENT.

A risk assumed by an employee is incidental to the performance of the work and is one that is liable to inflict injury upon him while performing his duties to the employer in the ordinary and usual manner without the inference of negligence on the part of the operator.

Johnson v. Waverly Brick & Coal Co., — Mo. —, 205 Southwestern 615, p. 617.

ASSUMPTION OF RISK DISTINCT FROM CONTRIBUTORY NEGLIGENCE.

An employee may assume the risks incident to his employment, although not guilty of contributory negligence in the performance of the work.

Athletic Min. & Smelting Co. v. Sharp, — Ark. —, 205 Southwestern 695, p. 698.

INSTRUCTIONS NOT APPLICABLE TO THE EVIDENCE—HARMLESS ERROR.

In an action by a miner for injuries caused by the alleged negligence of a fellow servant it is not proper for the court to submit to the jury the question of the assumption of the risk where it is entirely outside of the pleadings and of the evidence. But a mine operator can not complain of such an instruction where it was clearly in his favor.

Creek Coal Min. Co. v. Paprotta, — Okla. —, 175 Pacific 235, p. 233.

RISKS NOT ASSUMED.

HIDDEN DANGERS.

The rule as to the assumption of risk does not apply where the danger is hidden and unknown to an employee.

De Nardo v. Stephens-Jackson Co., — Pa. —, 104 Atlantic 584, p. 585.

PLACE OF WORK—DANGEROUS POSITION.

A carpenter employed in making certain repairs on a form in a smelting plant was injured by being caught between the form on which he was working and a molten-ore rake. It can not be said as a matter of law that the carpenter assumed the risk of the danger because he voluntarily placed himself in a dangerous position and that he could have stayed in a place of safety and performed the work, where the undisputed evidence does not show that the carpenter could have stayed at a different place and performed the work.

Athletic Min. & Smelting Co. v. Sharp, — Ark. —, 205 Southwestern 695, p. 697.

OBEYING COMMAND OF FOREMAN—DANGERS NOT OBVIOUS.

In an action by a miner for damages for injuries caused while riding on an empty car it can not be held as a matter of law that so to do was an act involving obvious danger, so dangerous that no reasonably prudent person would subject himself to its hazard, especially where it appeared that the complainant was directed by the foreman to ride the empty cars back to the "stock pile."

Montevalo Min. Co. v. Underwood, — Ala. —, 79 Southern 453, p. 455.

NEGLECT IN FAILING TO WARN.

A miner engaged in trimming cars in process of loading with coal by removing rock and other foreign substances and arranging the coal on the car, does not assume the danger of being knocked off the car by the switching and setting of other cars on the same track or switch, where it was a rule and the duty of both the railroad company and the coal-mine operator to warn the employees engaged in trimming the cars of the intention to set or switch other cars.

Johnson v. Waverly Brick & Coal Co., — Mo. —, 205 Southwestern 615, p. 617.

DANGER FROM RABBLE RAKE—WARNING TO EMPLOYEE.

A carpenter was engaged in making certain repairs upon a form in a smelting plant and around which a molten-ore rake passed when in operation and by which the carpenter was caught and injured. It can not be said as a matter of law that the carpenter assumed the risk of injury by standing within the orbit of the molten ore or rabble rake, where it appeared from the evidence that the rake was stopped at the time the carpenter began the work and that it was the custom of the operator, or those operating the rabble rake, to give notice to employees about the form before the rake was started or set in motion.

Athletic Min. & Smelting Co. v. Sharp, — Ark. —, 205 Southwestern 695, p. 697.

DEFECTIVE APPLIANCE—DEFECT NOT DISCOVERABLE.

A miner was injured while operating a drill in the defendant's mine. The miner was furnished with a steel drill over 3 feet long, and believed it to be sufficiently strong for the purpose for which it was furnished. The steel drill had been broken and had been carelessly welded together in a defective method and was in fact dangerous and unsafe. The miner in using the broken and welded drill did not as a matter of law assume the risk if the breaking was due to the improper welding if he did not know that the steel was defectively welded and if by the exercise of reasonable care the inspectors for the mining company should have discovered that the welded steel was weak and unsafe.

Gold Hunter Min. & Smelting Co. v. Bowden, 252 Federal 388, p. 390.

OBSTRUCTION ON HAULAGE TRACK.

The driver of a mule train of cars hauling ore out of a mine having no control over a timber truck and having no working connection with the timberman does not assume the risk of danger caused by the timberman leaving a timber truck on the haulage track around a curve where it could not be seen by the driver in time to avoid the injury complained of.

Asbury v. Hecla Min. Co., — Wash. —, 175 Pacific 179, p. 181.

PROXIMATE CAUSE OF INJURY.

PROXIMATE CAUSE OF INJURY—INTERVENING AGENCY—INFERENCE.

A mine was operated by a shaft some 550 feet in depth. The miners went in and out of the mine by means of ladders resting on platforms some 25 to 30 feet apart. The lowest or last platform was 95 feet above the bottom of the shaft with a continuous ladder for that distance by which the miners must descend and ascend from the mine. Three miners were descending the 95-foot ladder when from some unknown cause the upper one fell, striking the second one, and he in turn fell and struck the third one, causing him to fall to the bottom of the shaft, receiving injuries resulting in his death. The negligence of the mine operator in failing to put in platforms and in maintaining a ladder 95 feet in length must be regarded as the proximate cause of the death of the third and lowest miner and the falling of the first and the second miners and the striking of the third by the second is not such intervening agency as to constitute a defense to an action for damages for the death of the third miner in the light of the evidence which showed that one purpose of the platforms was to catch a falling miner.

Parrish v. Richardson, — N. C. —, 97 Southeastern 225, p. 226.

INDEPENDENT CONTRACTOR.**CONTRACT—RELATION NOT AFFECTED BY PROOF OF CUSTOM.**

A miner undertook by written contract with a mine owner to drive and complete a mining tunnel for a stated distance and of stated dimensions at a stated price per linear foot. A certain per cent of the contract price was reserved to insure the completion of the work. Proof of a custom or usage in connection with the work to the effect that in order to hasten the work of driving the tunnel miners were sometimes paid in accordance with the amount of work done and that in such cases the work was done under the control of the tunnel owner, could not have the effect of changing the relation of the owner and an independent contractor to that of master and servant.

Industrial Commission v. Maryland Casualty Co., — Colo. —, 176 Pacific 288, p. 289.

NEGLIGENCE OF EMPLOYEE—LIABILITY OF MINE OPERATOR.

A coal-mine operator can not be held liable to an employee for injuries caused by the acts or omissions of an employee of an independent contractor.

Seagle v. Stith Coal Co., — Ala. —, 79 Southern 301, p. 303.

RIGHT TO SURFACE SUPPORT.**COVENANT TO SUPPORT SURFACE.**

A railroad company by condemnation proceedings sought to appropriate a right of way over certain mining ground. A compromise agreement was entered into by which in consideration of the right of way the railroad company covenanted and agreed that in case it should make any excavation upon the adjoining land that should interfere with the natural support of the surface thereof, it would construct and maintain a retaining wall or other devices necessary to prevent its slopes from encroaching upon the adjoining land. The railroad company made an excavation, the result of which was that the shaft of the mining company was forced out of alignment and became useless for the purposes for which it was constructed. After the damage to the shaft the railroad company erected retaining wall or devices calculated to prevent injury to the property of the mining company. The covenant does not contemplate that the proposed retaining wall or other devices was to be of a preventive nature only and not of a remedial character. It does not mean that the building of a retaining wall by the railroad company might follow after the construction of the slope and relieve the

railroad company of damages accruing in the mean time. The covenant required the railroad company to anticipate by the construction of a reasonable wall or device the damages which might result; and the fact that the railroad company erected a retaining wall after the damage was done can not deprive the mining company of the contractual rights it is entitled to demand, and to recover such direct and natural damages as resulted from the breach of the railroad company's covenant.

Gumaerd Lead & Zinc Co. v. Erie R. Co., — N. J. Law —, 104 Atlantic 134, p. 135.

PRESUMPTION AS TO RIGHT OF SUPPORT—EXCLUSION OF RIGHT.

Where there has been a separation of the minerals and surface in ownership the law presumes that the surface owner has a right to support unless the language of the instrument regulating the separate rights clearly show the contrary. In order to exclude a right of support the language used must unequivocally cover such intention either by express words or by necessary implication. The same presumption in favor of a right of support which regulates the rights of parties in the absence of an instrument defining them will apply also in construing the instrument when it is produced. If the introduction of a clause in the conveying instrument to the effect that the mines must be worked so as not to let down the surface would not create an inconsistency with the actual clauses of the instrument, then it means that the surface can not be let down.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 113.

ABSENCE OF AGREEMENT TO SUPPORT—RIGHTS OF PARTIES.

Where the surface of land belongs to one owner and the underlying minerals to another, no evidence of title appearing to regulate or qualify the relative rights of enjoyment, the owner of the minerals can not remove them without leaving support sufficient to maintain the surface in its natural state.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 114.

See Wilms v. Jess, 94 Ill. 462, 34 Am Dec. 242.

Lloyd v. Catlin Coal Co., 210 Ill. 460, 71 N. E. 335.

Donk Bro. Coal & Coke Co. v. Novero, 135 Ill. App. 633.

Seitz v. Coal Valley Coal Min. Co., 147 Ill. App. 85.

Williams v. Gibson, 84 Ala. 228, 4 Southern 350.

Erickson v. Michigan Land, etc., Co., 50 Mich. 604, 16 Northwestern 161.

Lord v. Carbon Iron Mfg. Co., 42 N. J. Equity 157, 6 Atlantic 812.

Marvin v. Brewster Iron Min. Co., 55 N. Y. 538, 14 Am. Rep. 322.

Noonan v. Pardee, 200 Pa. St. 474, 50 Atlantic 255, 86 Am. St. Rep. 722.

Penman v. Jones, 256 Pa. 416, 100 Atlantic 1043.

SURRENDER OF RIGHT—PRESUMPTION.

The right of support is vital to the owner of the overlying surface and strata and is not presumed to have been given up unless expressly or by strong implication.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 111.

GRANT OF MINERALS—EFFECT ON RIGHT TO SUPPORT.

A grant of underlying coal with the right to mine and remove the same, but reserving the surface, does not permit the destruction of the surface or any part thereof by depriving it of its subjacent support.

Godfrey v. Weyanoke Coal & Coke Co., — W. Va. —, 97 Southeastern 186, p. 187.

OBLIGATION ON COAL-MINE OPERATOR—WAIVER.

Ordinarily the grantee or lessee of coal is required to leave such part of the coal as will suffice to support the surface in its natural condition or to construct other permanent artificial support, except where the grantor and owner of the surface has expressly and clearly exonerated the coal-mine operator from the burden of that servitude.

Godfrey v. Weyanoke Coal & Coke Co., — W. Va. —, 97 Southeastern 186, p. 188.

SEPARATE MINERAL STRATA—RIGHT TO SUPPORT.

The owner of land with a ledge of cement rock some 75 feet below the surface and with a coal seam some 600 feet below the surface conveyed the coal to an adjoining land owner with the right to mine and remove the coal "without entering upon or injuring the surface thereof." The word "surface" does not necessarily mean the top of the glacial drift, soil, or the agricultural surface, but it means, when applied to the construction of the particular deed, that part of the earth or geologic section lying over the minerals in question, and the owner of the cement stratum is entitled to the same rights as to surface support as the actual surface owner.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 111.

See *Yandez v. Wright*, 66 Ind. 319, 32 American Rep. 109.

Robertson v. Youghiogheny River Coal Co., 172 Pa. 566, 33 Atl. 706.

Mundy v. Rutland Lt., 23 Chan. Div. 8.

Humphries v. Brogden, 12 Q. B. 739.

EXCHANGE OF DIFFERENT STRATA OF MINERALS—RIGHT TO SUPPORT OF OVERLYING STRATUM.

The owner of land conveyed to an adjoining owner the cement rock and clay lying some 75 feet below the surface, with the right to mine the same without entering upon the surface, but the deed con-

tained no covenant not to injure the surface. The other owner conveyed a lower vein of coal in his land to the grantor in the first deed, together with the right to mine and remove the same without entering upon or injuring the surface thereof. The deeds do not define the meaning of the word "surface," and the deed conveying the cement rock does not secure to the grantor, the coal owner, the right to subside the overlying cement mine. But the implication is to the contrary from the provision giving the right to mine and remove coal "without entering upon or injuring the surface." The restrictions as to the mining are upon the coal owner and not upon the cement-rock owner. It is not probable that the cement-rock owner would intentionally agree that the relatively unimportant agricultural surface should be preserved but assent to the letting down of his valuable rock ledge and mine. The provision that the coal owner should not enter upon or injure the surface is equivalent to a provision that the coal mine should not be worked so as to "let down the surface," and this provision is not inconsistent with that giving the right to mine and carry away the coal and is clearly to the effect that the coal mine must be so worked as not to let down the surface, and "surface" in this sense applies to the cement-rock stratum.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 113.

RULE OF STATE COURTS BINDING ON FEDERAL COURTS.

The rule established by the supreme court of Illinois for a long period of time is that the right of surface support in connection with the underlying minerals is absolute and is a substantial part of the mass of rights constituting ownership of lands, and is not an incident of ownership nor an easement. Where a rule of property has been established and where mining rights have been granted in view of the rule established by a State court, the same rule will be followed when a controversy between a surface owner and an owner of the underlying minerals arises in a Federal court.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 113.

See Wilms v. Jess, 94 Ill. 464, 34 Am. Dec. 242.

Lloyd v. Catlin Coal Co., 210 Ill. 460, 71 Northeastern 335.

Kuhn v. Fairmont Coal Co., 66 W. Va. 711.

Kuhn v. Fairmont Coal Co., 215 United States 349.

Kuhn v. Fairmont Coal Co., 179 Federal 191.

NUISANCE.

WHAT CONSTITUTES—PROTECTION AGAINST.

The statute of Montana (Sec. 6162, Rev. Codes), provides that anything which is injurious to health or is indecent or offensive to the senses, or is an obstruction to the free use of property or that interferes with the comfortable enjoyment of life or property, is a nuisance.

The statute contemplates that a legitimate and useful business or occupation shall not be suspended on account of some imaginary or trifling annoyance that may offend the overrefined taste or that may disturb the supersensitive nerves of a fastidious person, but it does not permit a person to be driven from his home or compelled to live in it in positive discomfort in order to accommodate another in the pursuit of his business which offends the mind and taste of the average individual.

Cavanaugh v. Corbin Copper Co., — Mont. —, 174 Pacific 184, p. 185.

LAWFUL METHOD OF CONDUCTING MINING OPERATIONS.

Where the proof brings a mining company's mining operations within the statute defining nuisances, it is no defense to say that the operations were carried on according to approved methods, or that in maintaining the nuisance the company exercised due care, or that mining is necessary to the industrial life of a particular district. Community benefits can not be urged as justification for the injury or destruction of private property without compensation.

Cavanaugh v. Corbin Copper Co., — Mont. —, 174 Pacific 184, p. 185.

IMPROPER OPERATIONS—INJUNCTION.

Mining activities were begun in the residential part of a city after it had been laid out for residential purposes. Before such time it was a desirable and quiet neighborhood and well adapted for residential purposes. A mining shaft, tramway, hoisting engine, air compressor, water container, blacksmith shop, and other necessary machinery were placed in close proximity to a dwelling house and the inmates were thereafter disturbed at all times during day and night by unusual noises, ringing of bells, dumping of cars, running of cars over the tramway, rumblings and vibrations of the hoisting engine, and periodically by day and night there were heavy explosions of dynamite which awakened the sleeping inmates and jarred and shook the house and furniture. The noise, vibrations, and concussions were a source of great annoyance and discomfort to the inmates of the dwelling and made it unpleasant and uncomfortable to live in and caused the owner's wife to become nervous and her health temporarily injured. The residence itself suffered structural injury and its value depreciated one-half. Proof of such operations would under the statute of Montana constitute a nuisance.

Cavanaugh v. Corbin Copper Co., — Mont. —, 174 Pacific 184, p. 185.

INJURY TO LANDS—MEASURE OF DAMAGES—OPINION OF WITNESSES.

In an action by a land owner against an ore washer company for damages to his land caused by maintaining a nuisance in permitting muck, mud, and other foul and deleterious substances to flow down

and deposit upon the complainant's land, the measure of damages is the difference between the value of the land before and the value after the alleged injuries. Witnesses familiar with the value of the land may, after stating all the conditions and describing the injuries in detail, give their opinion as to the value of the land before and after the alleged injuries.

Tennessee Coal, Iron, etc., Co. v. Bunn, — Ala. —, 79 Southern 360, p. 362.

INJURY TO LAND—ACQUIESCENCE—ADDITIONAL INJURY WITHIN STATUTORY PERIOD.

Nuisance in that the defendant had caused to be floated down upon the complainant's land a large body of water and muck, mud and rock, and other débris from its ore washer plant and these had overflowed a large part of complainant's lands and the complainant thereby lost the use of his residence and was deprived of his lands for farming purposes and other domestic uses. The complaint expressly averred that such nuisance had been so maintained for one year next preceding the filing of the complaint. The defendant's plea averred that it had maintained and operated the washer continuously, openly, uniformly, and notoriously for a period of more than 10 years prior to the filing of the suit, to the knowledge and with the acquiescence of the complainant, and that during such period the deposits and overflow complained of had been, openly, continuously, and uniformly made on the complainant's lands with his knowledge and acquiescence and with the same results as the overflow and deposits complained of in the complaint. The averments of the complaint are sufficient to show, as against the plea, that the injuries complained of in the year preceding the commencement of the suit were in addition to and caused damages different and greater than those in which and to which the complainant had acquiesced for the preceding 10 years, and were sufficient in this respect to avoid the effect of his acquiescence for the statutory period of limitations.

Tennessee Coal, Iron, etc., Co. v. Bunn, — Ala. —, 79 Southern 360, p. 361.

LANDLORD AND TENANT—INJUNCTION—PARTIES.

In an action by a land owner to enjoin a nuisance which consists in the continuous throwing of rock and other débris on the complainant's land, the tenant in the possession of the land is a party beneficially interested and may be joined as a party plaintiff in proceedings for an injunction in order that a complete decree may be rendered; but in an action for damages for the trespass the tenant is not a proper party.

Woodstock Operating Corp. v. Quinn, — Ala. —, 79 Southern 253, p. 254.

INJUNCTION.

FINANCIAL ABILITY OF DEFENDANT TO RESPOND IN DAMAGES.

On the hearing of a bill of equity to enjoin a trespass consisting of the continuous throwing of rock and mining debris on the complainant's land on the ground that no adequate relief can be given in a court of law, a court of equity will take account of the financial status of the defendant as bearing on his ability to respond in damages when the nature of the damage is not irreparable.

Woodstock Operating Corp. v. Quinn, — Ala. —, 79 Southern 253, p. 255.

DANGEROUS AND INJURIOUS OPERATIONS—INJUNCTION.

A deed conveyed the surface of a town lot and a residence thereon to a purchaser and reserved the minerals beneath the surface with the right to mine and extract the same, but not in such manner as to disturb, damage, or interfere with the purchaser's possession. The grantee or purchaser under the deed can not deny generally the right to utilize the property in the minerals, but he is not estopped by his deed to complain of the method of carrying on mining operations that disturb and interfere with the quiet and peaceable possession and enjoyment of his own premises, or of acts that cause damage to his property.

Cavanaugh v. Corbin Copper Co., — Mont. —, 174 Pacific 184, p. 186.

DESTRUCTION OF SPRING.

Mining operations can not be enjoined and prevented on the ground of injury to springs on the surface where the grant of the mining right expressly provided that the operations should be carried on by the mine operator without being liable for any injury to the surface or anything therein or thereon, or "to the springs or water-courses thereof."

Preston County Coke Co. v. Elkins Coal & Coke Co., — W. Va. —, 96 Southeastern 973, p. 976.

REMOVAL OF SUPPORT—RIGHT TO ENJOIN.

The owner and operator of a mine engaged in mining cement rock from a mine some 100 feet below the surface may enjoin the owner of a coal seam lying some 500 feet below the complainant's mine, from so mining out and removing the coal as to cause subsidence to the complainant's mine, thereby rendering his mining operations dangerous and causing subsidence resulting in injuries and irreparable loss, where the deed conveying the underlying coal seam to the coal mine operator granted the right to mine and remove the coal "without entering upon or injuring the surface thereof," and

where it plainly appears that the remedy at law would not be as certain, prompt, complete, and efficient to the ends of justice and its prompt administration as the remedy in equity, and on the theory that one person can not be permitted to continuously damage another and compel the latter to accept money in satisfaction and where the proof clearly shows that the injuries already sustained and to result from continued coal mining is irreparable.

Marquette Cement Min. Co. v. Oglesby Coal Co., 253 Federal 107, p. 117.
See Bibby v. Bunch, 176 Ala. 585, 58 Southern 916.

SALE OF SURPLUS GAS—RESTRAINING USE BY SELLER.

A natural gas company was producing gas in the Beaver Meadow district and also owned producing wells in another district, and from the wells in both districts supplied its customers and itself. By a contract in writing it agreed to sell to another gas company all the "surplus natural gas" in the Beaver Meadow district, reserving to to itself the right to furnish gas to its customers and to use gas for itself from that particular district. Under these circumstances, the purchasing company could not enjoin the selling company either from disposing of its gas in the second district in a manner different from that at the time of the execution of the contract of sale, or from increasing its customers or otherwise using the gas produced in the Beaver Meadow district, as the contract of sale included the surplus gas only, and this was the gas remaining after whatever use the producing and the selling company might choose to make for any purpose it saw fit.

Elk Natural Gas Co. v. Ridgeway Light & Heat Co., — Pa. —, 104 Atlantic 546.

INJUNCTION TO PREVENT TRESPASS—MINING OVER LINE—DAMAGES.

In a suit by the owner of coal lands to enjoin an adjoining mine owner from mining over the line and for an accounting and for damages for negligently mining over the line and removing the coal, the rule in equity as to the measure of damages is the same as the rule at law. A trespasser can not change the amount of his liability by simply changing the forum and no lower measure of damages for a trespass not negligent or not willful could be substituted in equity for that fixed in law.

Mt. Savage George's Creek Coal Co. v. Monahan, — Md. —, 104 Atlantic 480, p. 484.

VIOLATION OF INJUNCTION—MEASURE OF DAMAGES.

In an action for the possession of coal lands, where there was a real contest as to the title of such lands, and where the defendant continued to mine coal in disobedience of an injunction, the measure

of damages for the plaintiff's recovery was the value of the coal at the tippie, less the cost of mining. Mining the coal in violation of an injunction was sufficient to deprive the defendant of any profit on the coal mined.

Staub v. Sewance Coal, Coke & Land Co. — Tenn. —, 205 Southwestern 320, p. 332.

MINING OVER LINE.

NEGLIGENT MINING OVER LINE—STATUTORY REGULATIONS—DAMAGES.

The rule in reference to trespass and negligence in mining coal over the line was not changed by the statute of Maryland. The statute of Maryland provides that in mining over the line by one operator the measure of damages "in the absence of fraud, negligence, or willful trespass, is the value of the coal in its native state." The statute also provides that if one operator "furtively or in bad faith works and abstracts minerals" then the offender may be charged with the whole value of the minerals taken and allowed no deduction for the work of mining. "Negligence" as used in the first paragraph is not embraced in one of the terms "furtively or in bad faith" as used in the second paragraph and there is no part of the statute applicable where there was negligence in mining over the line. The statute does not change the rule where coal is taken as the result of the negligence of the trespasser. A trespass in mining coal may be negligent though the trespasser did not know that he was over the line until informed by a surveyor, but where he did not know that he was not over the line and could have easily found out whether he was as this was his duty to do, and especially so where the offender knew that he was near the line and had been warned not to get over the line, and where he continued the operations for a period of four months without making any effort to ascertain the line.

Mt. Savage George's Creek Coal Co. v. Monahan, — Md. —, 104 Atlantic 480, p. 483.

BOUNDARY—KNOWLEDGE OF TRESPASSER—PROOF.

Under a charge of negligence of a coal-mining company in mining over the line it is not necessary to show that the trespasser knew that he was working beyond the line, but it is sufficient that he knew that he was near it and had been warned not to go over the line, and where it was a simple matter for an engineer to locate the line, and the circumstances were such as to suggest the propriety or necessity of fixing the line in the mine definitely before any coal was taken in the particular direction, and where the mining company

almost immediately after an injunction was served located the line and where it appeared that the mining company made various attempts to lease the coal on the adjoining land because its officers knew that they had mined up to or near the land.

Mt. Savage George's Creek Coal Co. v. Monahan, — Md. —, 104 Atlantic 480, p. 482.

KNOWLEDGE OF BOUNDARY—PRESUMPTION—RULE AS TO DAMAGES.

A coal-mine operator is held to know the boundary between him and the adjoining owner. If he has reason to believe, or if he is warned that he is near the line and makes no effort to ascertain the fact where he could easily find out and continues to mine and crosses the line in his mining operations, the rule of damages for negligent mining is applied. The reason of this is that the work is done underground and ordinarily the owner of the adjoining coal has little, if any, means of knowing that his property is being encroached upon. It would seem to be more important to have such a rule as to coal and minerals, as the owners can not as well protect themselves against trespass, inasmuch as the coal or minerals are underground.

Mt. Savage George's Creek Coal Co. v. Monahan, — Md. —, 104 Atlantic 480, p. 484.

See *Martin Coal Co. v. Cox*, 39 Md. 1.

Atlantic, etc., Coal Co. v. Maryland Coal Co., 62 Md. 135, p. 143.

MEASURE OF DAMAGES—STATUTORY AND COMMON LAW.

The statute of Maryland provides that where a person furtively or in bad faith works and abstracts minerals from the land of another the offending person may be charged with the whole value of the minerals taken and allowed no deduction in respect of his labor and expenses in getting them. This statutory rule as to the measure of damages is not materially different from the common law rule existing before the enactment of the statute, excepting the offender would not be entitled to deduct the cost of removing the coal to the mouth of the mine when that mode of ascertaining the value is adopted, if done furtively or in bad faith. The statute does not say "without deducting the cost of severing the coal," but the offender is to be allowed "no deduction in respect of his labor and expenses in getting them." The offender might, in addition to that, be liable for exemplary damages, as the statute should not be construed to prohibit such damages if the circumstances justified them.

Mt. Savage George's Creek Coal Co. v. Monahan, — Md. —, 104 Atlantic 480, p. 483.

REMOVAL OF COAL—INNOCENT TRESPASS—MEASURE OF DAMAGES.

Under the statute of Maryland, in the absence of fraud, negligence, or wilful trespass, the measure of damages for the wrongful taking of coal is the value of the coal in its native state before severance to the owner thereof at the time of taking.

Mt. Savage George's Creek Coal Co. v. Monahan, — Md. —, 104 Atlantic 480, p. 483.

NEGLIGENT TRESPASSER—VALUE OF COAL AT PIT'S MOUTH.

The real owner of coal as against a negligent trespasser is entitled to recover the value of the coal per ton for its severance without deducting the cost of severing it—that is, its value after it has become a chattel, which it has so become by the illegal act of the trespasser. If the coal is permitted to lie where mined without removing it and the rightful owner has no way to get it out or did not know of it in time to take it out before the mine is destroyed, it might be difficult to establish the value beyond what it had in its native bed. But where the coal has been removed by the trespasser to the mouth of the mine it had a value which is capable of being easily established that would seem to be the fair and just way to do so, and the trespasser has no right to complain of that mode being adopted.

Mt. Savage George's Creek Coal Co. v. Monahan, — Md. —, 104 Atlantic 480, p. 483.

METHOD OF DETERMINING DAMAGES.

The amount to be recovered for negligence in mining over the line is fixed by the worth of the coal when first dug, and the mode of reaching the value is through the price of the coal after it arrives at the pit's mouth, with a deduction for the cost of conveying it thither from the place where it was mined. This is said to be because it could have no value as a salable article without being taken from the pit, and that is the earliest moment at which the rightful owner could repossess himself of the coal. But it is not material whether the value of the coal at the mine's mouth be first ascertained and then an allowance be made for the bare expense in its simple conveyance thither, or whether a witness be asked to estimate directly its value just prior to its removal, as the rule of compensation is practically observed in either case.

Mt. Savage George's Creek Coal Co. v. Monahan, — Md. —, 104 Atlantic 480, p. 483.

LABOR ORGANIZATIONS.**REFUSING TO EMPLOY UNION MINERS.**

A coal mining company is within its rights in refusing to employ union men and in discharging those who join a union, and the com-

pany is entitled to protection against unlawful invasions of such rights.

Tosh v. West Kentucky Coal Co., 252 Federal 44, p. 47.

See *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 29, 38 Supreme Ct. Rep. 65.

PERSUADING MINERS TO QUIT WORK.

Union miners have a right by peaceful methods to persuade other miners not to work in a nonunion mine; but they have no right to attempt such result by violence or intimidation.

Tosh v. West Kentucky Coal Co., 252 Federal 44, p. 47.

EFFORTS TO UNIONIZE MINERS—EFFECT OF FORMER DECREE—CONTEMPT OF COURT.

A decree entered in 1907 enjoining certain named persons and their associates from the use of threats, intimidation, force, or violence in order to induce or compel miners to cease working in a nonunion mine is not binding upon other and different members of the United Mine Workers in 1917, who by threats and intimidation attempted to induce the then employed miners to cease working in the nonunion mine. The decree of 1907 that effectually prevented the strike can not operate upon other and different persons 10 years later who attempted to bring about a wholly different and distinct strike, though the offending persons were members of the same union, and persons joining in the attempted strike of 1917 can not be punished as for contempt of court on a charge of violating the decree of 1907.

Tosh v. West Kentucky Coal Co., 252 Federal 44, p. 48.

PERSONS BOUND BY INJUNCTION.

A decree in proceedings by a coal mine operator to enjoin a strike enjoining certain named defendants "and all other persons whatsoever who may have acquired notice, information, or knowledge of this judgment" from in any manner interfering with, molesting, hindering, obstructing, or stopping any of the business of the coal mining and from compelling or inducing the company's employees by threats, intimidations, force, or violence to refuse or fail to do their work, is binding not only upon the particular persons named, but upon all persons participating in the acts charged and mentioned in the decree who have actual knowledge of the injunction; and all such persons may properly be punished as for contempt of court in violating the decree.

Tosh v. West Kentucky Coal Co., 252 Federal 44, p. 47.

MINING LEASES.

LEASES GENERALLY—CONSTRUCTION.

PARTITION OF ROYALTIES.

Royalty in oil brought to the surface is personal property and as such is susceptible to partition among the coowners.

Warren v. Boggs, — W. Va. —, 97 Southeastern 589, p. 592.

LEASE AND OPTION TO PURCHASE—NOTICE OF ELECTION REQUIRED.

The United States Gypsum Company leased certain lands for its operations from the Mackey Wall Plaster Company. The lease also contained an option to purchase the property with an agreement to give the lessor and optionor a notice in writing at least sixty days prior to a certain date if it decided not to avail itself of the option to purchase; but on failure to give such notice it would be obligated to make the purchase. A letter written prior to July 1, by the manager of the Gypsum Company to the lessor to the effect that later the company would give formal notice that it would not purchase the property, is not sufficient to comply with the terms of the lease and on failure to give the notice as required by the lease the Gypsum Company was bound by the contract to purchase.

United States Gypsum Co. v. Mackey Wall Plaster Co., 252 Federal 397, p. 399.

OPTIONEE TO PURCHASE AS LESSEE.

A person holding an option to purchase a mining claim, coupled with the right of possession under certain conditions stands in the position of a lessee and not a purchaser.

Nicholson v. Smith, — Idaho —, 174 Pacific 1008.

LANDS COMBINED FOR LEASING—TENANTS IN COMMON—RIGHT TO ROYALTIES.

Where the owners of several adjoining tracts of land combine them for the purpose of leasing them for mineral production and be united in a joint lease because the mineral could thus be mined and produced more economically than in separate tracts, the owners thereby made themselves tenants in common in the minerals and the royalties are to be distributed to the several owners proportionately.

Pittsburgh & West Virginia Gas Co. v. Ankron, — W. Va. —, 97 Southeastern 593, p. 594.

See Warren v. Boggs, — W. Va. —, 97 Southeastern 589.

RIGHT TO REMOVE IMPROVEMENTS—RECOVERY FOR VALUE.

A land owner by an oral contract leased certain lands to be held by the lessee during his life time. It was also orally agreed that the lessee should remove all buildings and improvements placed upon the lands or if left the lessor would pay such sum as they should be reasonably worth. The contract of leasing was within the statute of frauds and the lease could be terminated by the land owner, the lessor. But the agreement that the tenant should be allowed to remove the improvements or that he should be paid the value thereof is not a contract for any interest in land and is not invalid under the statute of frauds and on the termination of the lease by the lessor, the lessee was entitled to recover the value of the improvements.

Fredell v. Orman Min. Co., — N. C. —, 97 Southeastern 386, p. 387.

FORFEITURE—NOTICE REQUIRED—ASSIGNMENT BY LESSEE.

A lease of mineral lands provided for forfeiture under certain circumstances by serving written notice upon the lessee. The lessee after taking possession under the lease assigned a part of his interest to a third person as a subtenant or a subcontractor. The original lessee on a violation of the forfeiture provisions can not defend against a forfeiture on written notice duly given to him on the ground that the lessor did not serve a written notice on the subtenant or subcontractor.

West v. Brugger, — Kan. —, 175 Pacific 673, p. 674.

COMMENCEMENT OF OPERATIONS—EXTENSION OF TIME—EFFECT ON FORFEITURE CLAUSE.

A mining lease provided that operations should begin within forty days from its date and that a suspension of operations at any time for more than ten days gave the lessor the right to forfeit the lease. An extension by the lessor of the time for commencing the work did not amount to a waiver of the requirement that the work should not be suspended at any time for more than ten days. The fact that the lessor was willing to defer the beginning of operations does not imply a willingness to suspend operations for an indefinite period at the convenience or pleasure of the lessee.

West v. Brugger, — Kan. —, 175 Pacific 673, p. 674.

SUSPENSION OF OPERATIONS—FORFEITURE.

A mining lease provided that the lessee was to begin operations within 40 days from its date and not to cease work for more than 10 days at any time without the permission of the lessor, delays caused

by unavoidable accidents or causes beyond the control of the lessee excepted. The lease also provided that on failure to prospect and develop the land within the time stated, or failure in any particular to carry out the provisions of the lease, the lease should become void and the lessor might declare the lease forfeited by written notice. The continuous prosecution of the work was obviously of large importance and the failure of the lessee to carry out any of the provisions of the lease gave the lessor the right to forfeit the lease by giving the required written notice.

West v. Brugger, — Kan. — 175 Pacific 673, p. 674.

ASSIGNMENT OF PART INTEREST—FORFEITURE—DEFENSE.

The lessee of a mining lease assigned and transferred a part of his interest to a subtenant or a subcontractor. Thereafter the original lessee subjected the part of the lease held by him to a forfeiture by a violation of its terms. The lessor declared that part of the lease forfeited, as provided in the lease, and thereupon made a new lease to the subtenant or subcontractor of the original lessee. In an action by the lessor to forfeit such part of the lease the lessee can not defend on the ground that his subtenant or subcontractor could not dispute or defeat his lessor's title, as this question could not be involved in an action between the lessor and the original lessee and to which the sublessee was not a party.

West v. Brugger, — Kan. —, 175 Pacific 673, p. 674.

LEASE OF STATE MINERAL LANDS—DISCRETION.

An applicant for a lease of State mineral lands for prospecting purposes, who has complied with the statute, the lands applied for being subject to such a lease, has a right to have the lease issued to him, and the State land commissioner has no discretion and on refusal may be compelled by mandamus to issue the lease.

State v. Savidge, — Wash. —, 175 Pacific 568, p. 569.

COAL LEASES.

CONSTRUCTION—ARBITRATION—CONDITION PRECEDENT.

The lease of a coal mine required the lessee, among other things, to mine and remove all workable coal, and provided that if the lessee should refuse to mine and remove the workable coal in any particular room after notice the lessee and the agent of the lessor should submit the question of available coal unmined to arbitrators to determine the amount of available merchantable coal remaining unmined; and if the lessee should then refuse to mine such coal he should pay the lessor a stipulated sum per ton as royalty, according

to the report of the arbitrators. Under this provision the arbitration is a condition precedent to the right to maintain and prosecute a suit to recover compensation or royalty for any alleged merchantable and available coal left unmined.

Flavelle v. Red Jacket Consolidated Coal & Coke Co., — W. Va., —, 96 South-eastern 600, p. 601.

CONSTRUCTION—AVAILABLE AND MERCHANTABLE COAL.

Under a coal-mining lease requiring the lessee to mine and remove all coal that was available, workable and merchantable, coal not available and not merchantable is not within the terms used to define what shall be mined.

Flavelle v. Red Jacket Consolidated Coal & Coke Co., — W. Va., —, 96 South-eastern 600, p. 605.

CONSTRUCTION—RIGHT TO MINE NEW SEAM.

A coal-mining lease gave the lessee the right to mine a known seam of coal, and also gave the lessee the refusal of the right to mine any other seam or seams that the lessor might subsequently discover in the leased lands. The lease extended for a period of 30 years, and during the existence of the lease and while the lessee was properly mining coal from the known seam, there was discovered on an adjoining tract a new and underlying seam of coal that extended into or through the leased premises. The mere failure of the lessee to open and mine this new seam did not estop him from claiming the right to work the same and was not an abandonment of the right on the lessee's part to work the same on the ground that he had not worked the new seam prior to an attempt to work the new seam by a second lessee.

Standard Pocahontas Coal Co. v. New Pocahontas Coal Co., 252 Federal 535, p. 539.

AUTHORITY TO MINE SEPARATE SEAMS OF COAL.

A lease for mining a certain known seam of coal provided that if the lessor should discover any other seam of coal it should be offered the lessee upon the same terms, and if the lessee within six months from such offer did not elect to accept the offer to mine any such other discovered seam, the lessor could lease the same to any other person or corporation, subject to the rights of the lessee. This lease gave the lessee an unlimited grant for coal mining under the entire tract and was intended to give the lessee the right to work all other seams that might be discovered by the lessor during the period of the lease.

Standard Pocahontas Coal Co. v. New Pocahontas Coal Co., 252 Federal 535.

CONSTRUCTION—ROYALTIES APPLIED ON LESSOR'S DEBT—EFFECT OF LOSSES.

The owner of two mines, being largely indebted, leased them to a coal-mining company by which the latter agreed to operate the mines and finance the indebtedness of the owner and apply two-thirds of the net profits to the indebtedness of the lessor, the lessee receiving one-third of the net profits. Later, and by a supplemental lease, the lessee agreed to continue to operate the first mine and to provide the necessary capital to develop and equip and put in condition for operation the second mine, the lessor to afford the lessee the free use of all sidings, tipples, buildings, power plants, machinery, and equipment of the first mine, with the right to use and remove them to the second mine when the first was exhausted. The royalty due the lessor was to be paid on his indebtedness until it was satisfied. In addition to the payment of the indebtedness of the lessor the lessee was to pay the lessor a stated amount monthly. There is nothing in the lease to indicate that the lessor shall share in the losses, and the lease or agreement does not create a partnership relation. Under the lease the profits must be computed and divided at the periods stated without any deductions for losses sustained by the lessee in the preceding period.

Shrader v. Commercial Coal Min. Co., — Pa. —, 104 Atlantic 151.

EQUIPMENT OF MINE—ALLOWANCE BY LESSOR—CONSTRUCTION.

The lease of a coal mine required the lessee to develop and equip the mine and provide the necessary funds for that purpose. It stipulated that the expenditure for machinery and cost of development should include only labor and cost of material and personal property purchased for that purpose, but there should be no charge for general superintendence, management, or supervision; and that the total amount of the expenditure for such purpose should not exceed \$25,000. All renewals or replacements of original equipment should be charged to the cost of production. The cost of the equipment of the mine to the amount of \$25,000 was to be deducted from the share of the profits that was to be paid to the lessor until the indebtedness was paid. The lessee equipped the mine for operation at an expense of \$20,000. Later the lessee reequipped the mine for operation by electrical power at an additional cost of \$37,000. The electrical equipment was not purchased to replace worn-out machinery but because the lessee believed a more economic operation of the mine would result and the change was a question of business policy, but the lease did not intend to place within the power of the lessee without limitation to charge against profits the cost of an entire change in the equipment of the mine.

Shrader v. Commercial Coal Min. Co., — Pa. —, 104 Atlantic 151, p. 153.

CONSTRUCTION—MINIMUM ROYALTY—LIABILITY.

A lease of a coal mine required the lessee to mine during each year of the term of the lease not less than a certain stated number of tons until all of the merchantable and workable coal in the particular seam covered by the lease should be exhausted; and on failure to mine the stated number of tons, the lessee should pay the lessor the royalty on such stated amount at an agreed price per ton. There was no guarantee in the lease as to the quantity or quality of the coal or as to the thickness of the vein. Under the lease, so long as the mine was in operation, the minimum royalty must be paid, and the fact that the vein became lighter in places, or that the coal contained an unusual amount of dirt, rendering it difficult to secure miners to work and mine the coal, is no defense in an action to recover the minimum royalty.

Corona Coal & Coke Co. v. Dickinson, — Pa. —, 104 Atlantic 741. p. 742.

PAYMENT OF ANNUAL MINIMUM ROYALTY—FAILURE TO MINE DESIGNATED AMOUNT.

A coal lease required the payment of an annual minimum royalty whether the quantity of coal mined should produce that amount of royalty or not. The lessee ceased mining operations and gave notice thereof to the lessor, within a royalty period and without having mined within such period coal sufficient to yield such royalty; but he left unmined coal which the lease required him to mine. In such case he is chargeable with such share of the royalty as had accrued at the time of the notice, less the value of the coal mined during such period at the agreed rate per ton.

Flavelle v. Red Jacket Consolidated Coal & Coke Co., — W. Va. —, 96 South-eastern 600, p. 606.

MINIMUM ROYALTY—INCREASED COST OF MINING—ACCEPTANCE OF SMALLER SUM.

A coal mining lease required the lessee to mine a certain amount of coal annually and to pay the royalty on such amount whether mined or not. The subsequent mining operations became more difficult and more expensive and the lessee failed to mine the stipulated amount. The fact that the lessor received and accepted the royalty on the amount of coal actually mined was not a waiver on his part of the balance due nor did it estop him from claiming the full amount due.

Corona Coal & Coke Co. v. Dickinson, — Pa. —, 104 Atlantic 741, p. 742.

MINIMUM ROYALTY—CHANGE IN QUALITY OF COAL—LIABILITY.

A lessee in a coal-mining lease who obligated himself to pay a stipulated royalty on a stated amount of coal to be mined annually, and whether mined or not, can not avoid the payment because of inconvenience, or the cost of compliance, though these may make compliance a hardship, but they can not excuse him from the performance of an absolute and unqualified undertaking to do a thing that is possible and lawful. The lease is not invalid nor is the lessee in any manner discharged from its binding effect because it turned out to be difficult or burdensome to perform. The fact that the vein of coal to be mined became lighter or thinner, or that the coal contained an unusual amount of dirt, did not discharge the lessee from his obligation.

Corona Coal & Coke Co. v. Dickinson, — Pa. —, 104 Atlantic 741, p. 742.

DEFINITE ROYALTIES—FAILURE TO MINE STATED AMOUNT.

Where a lessee covenants to mine a certain quantity of mineral or coal during a fixed period of time or to pay a definite rental or royalty in event he fails to do so, and he is not exonerated therefrom by some other stipulation of the lease, he will generally be held to a strict performance of the covenant.

Flavelle v. Red Jacket Consolidated Coal & Coke Co., — W. Va. —, 96 South-eastern 600, p. 605.

GRADES OF COAL—METHODS OF DETERMINING.

A coal-mining lease required the lessee to mine and remove all available, workable, and merchantable coal and to pay a certain stipulated royalty per ton on the best grade of coal and another stipulated royalty per ton for slack, if a market therefor was found. In determining what coal is not within the meaning of the terms of the lease, the important elements are its location and condition in the mine and the disproportionate difference between the cost of mining operations therefor and the profits to be derived therefrom if mined and sold. If this difference is such as to deter an ordinarily prudent and practical operator from mining the coal, then such coal is not within the meaning of the descriptive terms of available, workable, and merchantable coal.

Flavelle v. Red Jacket Consolidated Coal & Coke Co., — W. Va. —, 96 South-eastern 600, p. 605.

USE OF TIMBER FOR MINING—SPECIFIED SIZES—DATE OF MEASUREMENT.

A coal-mining lease gave the lessee, the mine operator, the right to take and use for mining purposes on the leased land so much of the timber thereon, with certain exceptions, not over twenty inches in diameter one foot from the ground as should be required for such purposes. The lease conferred a mere right to cut and use timber not over twenty inches in diameter as the mine operator should need in the progress of mining operations. Nothing but necessity for such use justified the taking of any of the timber and therefore the size of the timber to be so taken, was determinable as of the dates of necessity for its use. The lease did not purport to vest title to any timber as of its date and the grantee could not during a period of 17 years claim and cut timber that was of the specified diameter at the date of the lease. The grant was one of mere license to cut and use certain classes of timber for specified purposes and the limitation as to the size applied at the time the necessity for cutting arose.

Raleigh Coal & Coke Co. v. Mankin, — W. Va. —, 97 Southeastern 299, p. 300.

See Godfrey v. Weyanoke Coal & Coke Co., — W. Va. —, 97 Southeastern 186, p. 189.

FAILURE TO PAY ROYALTIES—CANCELLATION OF LEASE—
ROYALTIES DUE AFTER SUIT.

The lessor of a coal lease brought suit to cancel the same upon the ground that the lessee had failed to pay the minimum royalty due and had committed waste upon the leased premises. The action was commenced on November 26, 1915, and by the terms of the lease the minimum royalty for the year 1915 was not due until January 15, 1916. There had been no default in the payment of the annual royalties at the time the suit was filed. The lessee can not be held accountable for failing or refusing to do anything under the contract after the suit was commenced for the cancellation of the contract. At the time of the institution of the suit there was due to the lessor on monthly royalties the small sum of about \$50 and payment of this amount had been provided for. The lessor can not maintain an action for forfeiture or cancellation of the lease for the nonpayment of royalties due and payable after the commencement of the action.

Continental Fuel Co. v. Haden, — Ky. —, 206 Southwestern 8, p. 10.

FORFEITURE—FORFEITURE CLAUSE—ENFORCING.

The parties to a coal-mining lease for a term of years may lawfully provide for its forfeiture for the breach of the lessee's covenants or the conditions contained in the lease; and while courts abhor forfeitures they will not hesitate to give effect to such provisions when

clearly provided for by the parties and where the conditions are clearly violated.

Continental Fuel Co. v. Haden, — Ky. —, 206 Southwestern 8, p. 10.

FORFEITURE—ABSENCE OF FORFEITING CLAUSE—REMEDY AT LAW.

A forfeiture of a coal-mining lease will not be decreed for a breach of the terms of the lease in the absence of a forfeiting clause, but the parties will be left to their legal remedies for damages for any alleged breach of the lease.

Continental Fuel Co. v. Haden, — Ky. —, 206 Southwestern 8, p. 10.

MINIMUM ROYALTY—DEVELOPMENT OF MINE—FORFEITURE OF LEASE.

A coal-mining lease provided that the lessee should pay to the lessor a royalty of 2 cents per ton on all coal mined, or he should pay at least the sum of \$1,200 per annum as royalty whether sufficient coal should be mined to produce that sum at the royalty rate or not. The lease bound the lessee to develop the mine to a daily capacity of 500 tons within two years and thereafter to mine not less than 60,000 tons of coal per annum. The parties thus agreed upon the minimum royalty to be paid by the lessee and to be accepted by the lessor; and if the lessee should pay the stipulated royalty without taking out any coal the lessor could not be damaged under the contract, as he would be receiving his royalty and retaining the coal. Under such circumstances the failure to mine and remove the specified amount of coal, or any amount of coal, can not be made the basis of an action by the lessor to forfeit or cancel the lease on the ground of waste.

Continental Fuel Co. v. Haden, — Ky. —, 206 Southwestern 8, p. 10.

WASTE—REMEDY.

Section 2328 of the Kentucky statute provides that if a tenant for life or years shall commit waste during the term of anything belonging to the tenement without license in writing he shall be subject to an action in waste, shall lose the thing wasted, and pay treble the amount at which the waste shall be assessed. This section is based upon the old English statutes and provides a remedy for forfeitures and damages in cases of voluntary waste. There is an obvious and well recognized distinction between voluntary waste which consists in the commission of some destructive act and permissive waste consisting in omission by a tenant for life or years to keep the premises in proper repair. That the statute was intended to authorize an action for voluntary waste and not for permissive waste is clear and leaves permissive waste to be dealt with in equity.

Continental Fuel Co. v. Haden, — Ky. —, 206 Southwestern 8, p. 12.

WASTE—EQUITABLE RELIEF—FORFEITURE.

The lessor in a coal-mining lease brought an action for forfeiture and to have the lease canceled on the ground of waste because of the alleged failure of the lessee to develop the mine and to mine the stipulated number of tons of coal per annum. But the rule of law is that forfeiture is no part of the equitable relief afforded in cases of waste. A court of equity will not lend its aid actively to enforce a forfeiture, but will leave the parties to their legal remedies.

Continental Fuel Co. v. Haden, — Ky. —, 206 Southwestern 8, p. 12.

EQUITABLE WASTE—INJUNCTION TO PREVENT.

A court of equity will restrain equitable waste alleged to have been committed under a coal-mining lease only when it is shown that the lessee has been guilty of a wanton and unconscientious abuse of his rights, ruinous to the interests of the lessor. Under this rule a court of equity will not forfeit a mining lease on the ground of equitable waste on the part of the lessee in failing to mine the quantity of coal specified where the minimum royalty provided for was paid, which equaled the ton royalty of the amount stipulated to be mined, and where the lessee in conducting his mining operations had placed improvements in the mine and upon the leased premises to the extent in value of \$100,000.

Continental Fuel Co. v. Haden, — Ky. —, 206 Southwestern 8, p. 10.

OIL AND GAS LEASES.

CONSTRUCTION AND VALIDITY.

An oil and gas lease contained a provision to the effect that the lessee was to have "first choice on other drilling at price paid in the Heaton field by reliable operators." The terms of this provision are so indefinite and lacking in mutuality as to render it ineffective, and no action for the recovery of damages can be based on an alleged breach of this provision of the contract.

Emery Bros. v. Mutual Benefit Oil Co., — Okla. —, 175 Pacific 210, p. 211.

CONSTRUCTION—COMMENCEMENT OF OPERATIONS.

An oil and gas lease dated May 14, 1912, provided that a test well should be commenced within 5 miles of the leased premises before September 1, 1912. The lease further provided that a well should be commenced on the leased premises "within two years of said date," or that certain stated rentals were to be paid in lieu of development. Under the terms of the lease the well on the leased premises was to be commenced or rentals paid from September 1, 1912, and not from the date of the lease.

Southwestern Oil Co. v. McDaniel, — Okla. —, 175 Pacific 920, p. 921.

PRACTICAL CONSTRUCTION—TIME FOR PAYMENT OF RENTALS.

An oil and gas lease was dated May 14, 1912. The lease provided that a certain test well was to be drilled, not upon the premises, before September 1, 1912, and that a well was to be commenced on the leased premises "within two years of said date or rentals paid for delay." In the construction of this clause of the lease by a court the construction placed thereon by the parties before any controversy arose between them is entitled to great consideration. Rentals had been paid and accepted on the theory that they were due on September 1 and not May 15. The plaintiff in his original petition alleged that he had declined to accept the rentals which came due on September 1, 1916. By their conduct the parties construed this provision as meaning the rentals were due and payable on September 1 each year, and this conduct does not conflict with the meaning of the language used and must be given effect.

Southwestern Oil Co. v. McDaniel, — Okla. —, 175 Pacific 920, p. 921.

CLASSES—"UNLESS LEASE"—TERMINATION.

Most of the oil and gas leases fall into two classes commonly designated as the "or lease" and the "unless lease." The leases belonging to these respective classes possess such marked distinctions in the rights and liabilities of the parties that these distinctions should not be lost sight of in the construction of such a lease. Under an "unless lease" the lessee, so long as he pays the rentals in the manner provided, has an option to continue the lease in force. Such a lease is subject to termination at the will of the lessee, and the privilege may be exercised by a mere failure to pay the stipulated rental at the time due and upon which the lease automatically terminates, and the lessor can not sue under the lease for the rentals; but under such a lease the lessor has not the right to terminate the lease so long as the lessee complies with its terms.

Northwestern Oil & Gas Co. v. Branine, — Okla. —, 175 Pacific 533, p. 535.

CLASSES—"OR LEASE"—TERMINATION—RIGHTS OF PARTIES.

Under an "or lease," even when containing a surrender clause, the payment of rentals by the lessee as required is not necessary to keep it alive from time to time, nor does the failure to pay automatically terminate the contract, as under an "unless lease;" and where the lessee makes default in the payment of rentals the lessor may waive the forfeiture clause and sue and recover rentals due according to the lease. The lessee may terminate the lease at any time by availing himself of the right to do so contained in the surrender clause and by paying all the accrued rentals due at the time of surrender.

Northwestern Oil & Gas Co. v. Branine, — Okla. —, 175 Pacific 533, p. 535.

RIGHT TO USE OF EXISTING WELLS.

An oil and gas lease granted to the lessee the land described for the purpose of mining and operating for oil and gas and laying pipe lines, building tanks and structures thereon necessary to take care of the oil. The lease was to remain in force for 10 years and as long thereafter as oil or gas was produced. The lessee was to deliver in a pipe line to the credit of the lessor, free of cost, one-eighth of all oil produced and to pay the lessor one-eighth of all sums received from the sales of gas, and to give the lessor free use of gas for fuel, and to pay the lessor for gas used off the premises \$50 per year, payable three months in advance. The lessee agreed to complete a well within one year or pay \$160 for each additional year the completion was delayed, and such payment on the completion of the wells should operate as a liquidation of all rent under this provision. The lessee was to have the right to use free of cost, gas, oil, or water produced on the premises for its operations thereon, except water from the wells of the lessor. The lessee was not to be bound by any change in the ownership of land until duly notified thereof. The language of the lease did not restrict the gas or oil rights granted. The lease granted to the lessee the right to operate a gas well that was in existence at the time the lease was executed, and under the lease the lessor, the land owner, could make no claim for damages for gas taken from such existing well.

Southwestern Oil Co. v. McDaniel, — Okla. —, 175 Pacific 920, p. 922.

VALIDITY—PRIORITY OF FIRST LEASE RECOGNIZED.

A husband and wife executed an oil and gas lease on a certain tract of land owned by them. After the death of the husband the wife as the sole owner executed a second lease on the same land. The lessee of this second lease refused or failed for some reason to enter upon the land and produce oil and gas under the authority of the lease. After the termination of such second lease the surviving wife as the owner conveyed by deed the oil and gas rights in the land, and therein expressly recognized the existence and the validity of the first and original lease executed by the husband and wife. This she had the power to do and this established the validity of such original lease.

Snodgrass v. Koen, — W. Va. — 96 Southeastern 606, p. 607.

EXECUTION AND VALIDITY—FORMER ADJUDICATION—ESTOPPEL.

The effect of the execution and the validity of an oil and gas lease was determined in an action between the parties and that the lease was a legal and binding obligation. These questions having been litigated and settled in a former suit between the same parties can

not be relitigated in a subsequent action. The estoppel created by the former proceedings is not confined to the judgment alone but extends to all facts involved in it as necessary steps or as the basis upon which it must have been founded.

Uncle Sam Oil Co. v. Richards. — Okla. —, 175 Pacific 749.

See Uncle Sam Oil Co. v. Richards, — Okla. —, 158 Pacific 1187.

CONSIDERATION—CASH BONUS—MUTUALITY.

An oil and gas lease provided that the lessee should commence the drilling of a well within twelve months from its date or pay a quarterly rental of \$40. It also provided that the lessee might at any time on the payment of the further sum of \$2 and as accrued liabilities, surrender the leased premises, and terminate all future liabilities under the lease. A cash bonus of \$160 was paid by the lessee for the privilege of the lease. The bonus was a sufficient consideration to support each and all of the covenants of the lease, and the presence of the surrender clause did not render the lease void for want of mutuality nor did it confer on the lessor the right to terminate the lease at will.

Northwestern Oil & Gas Co. v. Branine, — Okla. —, 175 Pacific 533, p. 534.

Pucini v. Baumgarner, — Okla. —, 175 Pacific 537.

Southwestern Oil Co. v. McDaniel, — Okla. —, 175 Pacific 920, p. 922.

VALIDITY AND PRIORITY—TITLE OF LESSOR—ADVERSE POSSESSION.

An adult son took possession of land purchased by his father under a title bond, claiming that the land was intended for him as a gift. He occupied and improved the land, paid the balance of the purchase price due under the bond, and after some six years "turned over" the land to his mother, who continued to occupy and improve the land under claim of ownership and title for a period of more than 25 years, executing leases for the privilege of mining coal under the land, and finally disposed of the land by will. The husband and father after an absence of more than 30 years returned, claimed the land, and executed an oil and gas lease thereon. The devisee in possession of the land also executed an oil and gas lease on the land. The lease executed by the devisee gave to his lessee the prior and superior right to operate the land for oil and gas on the theory that the son and the mother through him acquired title to the land by adverse possession as against the father and husband.

Big Blaine Oil & Gas Co. v. Yates, — Ky. —, 206 Southwestern 2, p. 4.

LEASE OF HOMESTEAD—ASSENT OF WIFE—ESTOPPEL.

An oil and gas lease on a homestead for the purpose of drilling and operating generally for oil and gas, requires the assent of both husband and wife. But the assent of the wife to such a lease can not

be implied, nor can it be validated on the ground of estoppel where the wife, with knowledge that the execution of such a lease was contemplated, went with her husband to a bank and remained a part of the time while the execution of the lease was discussed, but was not present at the time the lease was in fact executed, and the consideration paid was credited on the indebtedness of the husband to the bank and where during the conversation the wife stated to the husband that she did not want the land leased.

Carter Oil Co. v. Popp, — Okla. —, 174 Pacific 747, p. 748.

LEASE OF HOMESTEAD—CONSENT OF HUSBAND AND WIFE.

An oil and gas lease on land occupied as a homestead which granted the right to enter upon and operate the same for oil and gas, together with the right to lay pipe lines, erect power houses, stations, and fixtures necessary for the production of oil and gas, is such a grant of the use and occupancy of the homestead as requires the joint consent of the husband and wife, and an oil and gas lease executed by the husband alone is invalid.

Carter Oil Co. v. Popp, — Okla. —, 174 Pacific 747, p. 748.

OPTION CONTRACT—MUTUALITY AND VALIDITY.

The fact that a contract in the nature of an oil and gas lease may constitute an option is not sufficient to make it unilateral, as it is the essence of an option contract that it is not mutual. The optionee pays his money or performs his promise for the right of electing whether he will require performance by the other party, and the optionor relinquishes his right of choice after the consideration is received by him. An oil lease that by its terms granted to the lessee an estate in possession which vested immediately on its execution and delivery and under which the lessee had the right, according to its terms, for a period of five years to make exploration on the leased premises, does not lack mutuality and can not be avoided by the lessor where he had received and accepted a cash bonus and where four successive quarterly payments had been tendered by the lessee in strict conformance with the terms of the lease.

Northwestern Oil & Gas Co. v. Branine, — Okla. —, 175 Pacific 533, p. 534.

SURRENDER CLAUSE—EFFECT ON VALIDITY.

The fact that an oil and gas lease contained a surrender clause whereby the lessee might, on the payment to the lessor of the sum of \$2, surrender the lease and relieve himself from future liability did not render the lease unilateral and voidable for want of mutuality and authorize the lessor to terminate the lease at will where a cash bonus was paid for the lease and quarterly or annual rentals

were to be paid in lieu of or on failure of the lessee to commence drilling.

Northwestern Oil & Gas Co. v. Branine, — Okla. —, 175 Pacific 533, p. 534.

OPTION AND SURRENDER CLAUSE—WAIVER BY LESSEE.

An oil and gas lease contained the usual surrender clause and contained this further provision: "This surrender clause and the option herein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law or equity by the lessee to enforce this lease or any of its terms." Such a provision is valid and binding, and when the lessee filed a suit to enjoin the lessor from re-leasing the premises and further interfering with his rights under the lease the surrender clause became inoperative and the lessee thereby became bound to perform the covenants of the lease and is entitled to be protected in his rights under the lease.

Pucini v. Baumgarner, — Okla. —, 175 Pacific 537, p. 538.

ANNUAL BONUS FOR OIL WELLS—PROOF OF REQUIRED PRODUCTION.

A lessee in an oil and gas lease covenanted to pay an annual bonus of \$50 for each oil well producing five or more barrels a day. An action by the lessor to recover the bonuses provided for can not be maintained without proof of the fact that the wells drilled or in operation produced five or more barrels per day on an average and of the length of time that the wells produced such average amount.

Moherman v. Anthony, — Kan. —, 175 Pacific 676, 678.

DELAY IN DEVELOPMENT—EXPRESS AND IMPLIED COVENANTS.

In an oil and gas lease the question of delay in development was expressly covered by the terms of the lease for a consideration good at law and satisfactory to the parties, and the law does not render such an agreement unenforceable when fairly entered into. No implied covenant for development has ever been permitted to stand against such an expressed agreement, and the acceptance of stipulated rentals for delay is treated as full compensation for delay during the period for which the rentals were paid and received.

Southwestern Oil Co. v. McDaniel, — Okla. —, 175 Pacific 920, p. 922.

DEVELOPMENT POSTPONED—CONSIDERATION—SURRENDER CLAUSE.

Where no cash bonus or other consideration is paid for an oil and gas lease, development would be the sole consideration for the lease; but where a substantial bonus was paid it is sufficient to postpone development upon payment of the stipulated rental in conformity with the covenants of the lease. The payment of a substantial cash

bonus is a sufficient consideration to support a surrender clause in favor of the lessee, and a surrender clause in such a lease does not render it void for want of mutuality and does not confer on the lessor the right to terminate the lease at will.

Northwestern Oil & Gas Co. v. Branine, — Okla. —, 175 Pacific 533, p. 535.
See Pucini v. Baumgarner, — Okla. —, 175 Pacific 537.

EXTENT OF DEVELOPMENT DETERMINED.

In an action to cancel an oil and gas lease on the ground of a breach of an implied covenant to drill the lessee oil company in its answer and by a statement of its counsel in open court offered to abide by the decision of the court as to the amount of development that should be made on the leased land. The finding and decree of the court was that the oil company should drill two additional wells or pay \$50 per annum each in lieu of the drilling of such wells, and if neither of these things were done the lease should be cancelled. The judgment rendered was invited by the lessee and was, in fact, in its favor and it was not prejudiced thereby and can not complain.

Blackwell Oil & Gas Co. v. Whitesides, — Okla. —, 174 Pacific 573, p. 575.

PRODUCTION OF GAS ONLY—FAILURE TO DEVELOP—CANCELLATION.

The same equitable principle as to the cancellation of an oil lease for breach of an implied agreement to develop applies to a condition where a well drilled on the leased premises, even though the royalty for gas was a stipulated sum per annum for each well. But on the failure of the lessee to develop, equity affords the only adequate remedy for relief, and the lessee must reasonably and fairly develop the land or surrender the lease.

Blackwell Oil & Gas Co. v. Whitesides, — Okla. —, 174 Pacific 573, p. 574.

DELAY IN PAYMENT OF RENTAL—CANCELLATION PREVENTED.

An oil and gas lease provided that if an oil well was not commenced within one year the lease should be void unless the lessee should pay a rental of \$80, payable quarterly in advance, payment to be made by cash or check to the lessor or to be deposited in a certain named bank. The lessee forwarded a check by registered letter in time to reach the lessor on November 28, but by reason of delay in the mail it was not received until December 5. The lessor by suit attempted to have the lease canceled. The lessee manifested no intention to abandon his right under the lease, and attempted to make the payment before the stipulated time, and it was not through any act of his that the payment did not reach the lessor in ample time. Under the circumstances it would be inequitable to grant the relief prayed for and cancel the lease.

Kays v. Little, — Kan. —, 175 Pacific 149.

INTEREST OF LESSEE—PROOF BY PAROL.

A contract, or an ordinary oil and gas lease, permitted the lessee for a term of years to go upon the land described to prospect for oil and gas, mine and operate tanks, power stations, and oil and gas pipe lines upon a royalty basis. Such an agreement or lease conveys no interest in nor does it create any incumbrance upon the land, or in oil or gas found therein, and the land is still to be considered in the possession of the grantor. The contract amounts only to a license entitling the licensee to search and dig for oil and gas according to the terms of the grant and to appropriate the products to his own use on payment of the royalty provided for. Such an instrument creates an incorporeal hereditament, a right issuing out of or concerning the land, and establishes a mere chattel interest in no manner under the proscription of any rule, statutory or otherwise, against conveyances or incumbrances of real estate or other interests except by writing. Under such agreement or lease the real beneficiary owner of such property right may be shown by parol.

Wallawalla Oil, Gas & Pipe Line Co. v. Vallentine, — Wash. —, 174 Pacific 980, p. 981.

TITLE TO OIL AND GAS.

The lessors in an existing oil and gas lease by deed granted all the royalty interest in the oil and the rentals from gas wells, and conferred upon the grantee exclusive authority to drill for oil and gas after the termination of the prior lease. The deed vested in the grantee the fee simple title to the oil and gas in place in the land.

Snodgrass v. Koen, — W. Va. —, 96 Southeastern 606, p. 607.

GRANT OF OIL AND GAS—SURFACE AND MINERALS NOT SEVERED.

An oil and gas lease granted to the lessee all the oil and gas and mineral in and under certain described premises, with the right to enter thereon for the purpose of drilling or operating for oil, gas, or minerals, and to erect necessary buildings, structures, pipes, and machinery necessary for the production and transportation of oil and gas or minerals. This lease under the statute of Kansas (General Statutes 1915, sec. 11, 280) does not operate to sever and convey as real estate subsurface mineral deposits.

Hover v. McNeil, — Kan. —, 175 Pacific 150.

SEPARATION OF OIL AND GAS RIGHTS BETWEEN LESSEES—RIGHTS OF LESSOR.

The lessees under an oil and gas lease by an agreement separated the gas and oil rights, one taking the gas and the other the oil. Each agreed to interfere as little as practicable with the interests of the other.

Among other things it was agreed that no oil well should be drilled closer than 1,000 feet to any gas well so long as the same was producing one quarter million cubic feet per day. The original lease did not contain any 1,000-foot restriction and as against the land owner, the lessor, such a restriction and agreement between the lessees can not be enforced. The lessor, the land owner, had the right to the proper development of the property without regard to the agreement between the lessees and an injunction to prevent the drilling of a well within the alleged prohibited restriction should not be granted in violation of the rights of the lessor.

Arnold v. Garnett Light & Fuel Co., — Kan. —, 174 Pacific 1027, p. 1023.

UNAUTHORIZED SALE OF LEASE—RIGHTS OF LESSOR—RECOVERY.

A land owner executed an oil and gas lease on 80 acres of land; the lease was to remain in force for five years, and as long thereafter as oil and gas should be produced. The lessee bound himself by the lease to give a yearly bonus of \$50 for each well producing five or more barrels of oil per day. The lease also provided that it was transferable only by consent of the lessor, and if sold the lessor was to receive one-half of the consideration received therefor. The lessee subsequently and without the consent of the lessor sold the lease, together with several others and a large amount of property for the bulk consideration of \$65,000. There was no separate consideration for the lease in controversy. Under the facts, the lessor could not maintain an action to recover one-half of the bulk consideration, as the identity of the lessor's property had not been lost or destroyed, and the doctrine of confusion of goods had no application. The lessor under the facts stated was entitled to recover his share of the value of the lease at the time of the sale.

Moherman v. Anthony, — Kan. —, 175 Pacific 676.

WRONGFUL SALE BY LESSEE—ESTOPPEL TO DENY—INVALIDITY.

An oil and gas lease provided that it should be transferrable only by consent of the lessor, and if sold the lessor was to receive one-half of the consideration. The lease also provided that if a second well drilled within six months of the first drilling should not be a producing well the lease should revert to the lessor. The second well was not a producing well but other producing wells were subsequently drilled. The lessee sold and assigned the lease without the consent of the lessor. In an action by the lessor to recover one-half of the consideration received, pursuant to the terms of the lease, the lessee is estopped from asserting that because of the failure of the second well to be a producing well the lease reverted to the lessor.

Moherman v. Anthony, — Kan. —, 175 Pacific 676, p. 678.

SALE OF GAS BY LESSEE—OBLIGATION OF LESSEE TO LESSOR.

A lessee under an oil and gas lease contracted with a third person to sell him for gasoline purposes, and to be manufactured into gasoline, all gas produced from certain oil wells on the leased premises. In the absence of words indicating an intention to restrict his right to develop and exploit the oil field, the lessee did not debar himself from the use of such means as science and experience have proved to be advantageous in the production of oil, although as a result thereof the flow of gas was decreased and the gas lost some of its gasoline properties, to the loss and damage of the purchaser of the gas.

Beeson v. Drake Oil Co., — W. Va. —, 27 Southeastern 414, p. 415.

FORFEITURE—JURISDICTION OF EQUITY.

A court of equity has jurisdiction to decree the forfeiture of an oil and gas lease on the ground of a breach of an implied covenant to diligently operate and develop the leased premises, where such forfeiture will effectuate justice. The lessor is not limited to an action for damages because of such a breach of an oil lease where the measure of damages is uncertain, vague and indefinite.

Blackwell Oil & Gas Co. v. Whitesides, — Okla. —, 174 Pacific 573.

RIGHT TO DECLARE FORFEITURE—WAIVER.

A lessor in an oil and gas lease after cause for forfeiture accrued failed to notify the lessee of his intention to avoid the lease and thereafter accepted rentals in lieu of development. This conduct on the part of the lessor was a waiver of his right to a forfeiture of the lease.

Southwestern Oil Co. v. McDaniel, — Okla. —, 175 Pacific 920, p. 921.

SUIT TO QUIET TITLE—INSUFFICIENT PROOF—AMENDMENT.

In an action to quiet title to certain oil and gas lands the court entered judgment against the plaintiff, but permitted him to file an amended petition and to foreclose a contract of purchase, in the nature of a mortgage upon the land in controversy. The amended petition showed an agreement by a former owner of the land to convey the premises to the complainant and that there was a large sum due upon the contract; but there was nothing in the amended petition to show what interest the defendants had or claimed in the land or to show that they had become interested in the contract for the deed or had assumed the liability imposed by the contract. Under the circumstances of the case and upon the trial the former proceedings could not be referred to in aid of the amended petition as an amended pleading supersedes the original and the latter can not be looked upon as defining the issues.

Wyatt v. State Line Oil & Gas Co., — Kan. —, 175 Pacific 596.

SPECIFIC PERFORMANCE—RULE IN EQUITY.

Specific performance may be waived in that class of contracts and in oil and gas leases, in which one party was not originally bound or against whom the equitable remedy could not be obtained where such party by his subsequent acts, omissions or assent waives the objection of want of mutuality and places himself in a position that performance by him may be compelled; and in such case he may thereafter claim and enforce specific performance against the other party. The filing of the bill and the tender of performance supplies the want of mutuality.

Pucini v. Baumgarner, — Okla. —, 175 Pacific 537, p. 538.

INJUNCTION—LEGAL AND EQUITABLE RIGHTS.

An injunction to prevent an alleged trespasser from drilling oil wells and appropriating and removing oil from the premises in controversy in effect permits the complainant to drill for, remove and market the oil from the land in dispute. If the complainant has no legal title to the land as claimed by the defendant and the defendant has in fact a duly approved oil lease from the rightful owner, the injunction might work an injustice to such lessee and the owner, but for the fact that the courts have ample authority to safeguard their interest if in a proper proceeding a probability of recovery is shown.

Collier v. Bartlett, — Okla. —, 175 Pacific 247, p. 250.

PARTITION OF LAND SUBJECT TO LEASE—DIVISION OF ROYALTIES.

A tract of land covered by an oil and gas lease was subdivided in a proceeding in bankruptcy and each subdivision sold separately by the trustee to different purchasers. The purchasers of these respective parcels of land from the trustee bought all of the estate therein subject only to the right of the oil and gas lessee to explore for and produce the oil and gas. This right conferred upon the lessee is the same as would have existed in the different purchasers had there been no lease and from this it follows that the purchasers of each subdivision is entitled to the royalties on all of the oil produced from wells drilled on his subdivision and royalties from the oil or gas must be paid to the owner of the subdivision upon which the wells are drilled from which the production is had.

Pittsburgh & West Virginia Gas Co. v. Ankron, — W. Va. —, 97 Southeastern 593, p. 594.

See *Osborn v. Arkansas Territorial Oil & Gas Co.*, 103 Ark. 175, 146 Southwestern 122.

Fairbanks v. Warrun, 56 Ind. App. 337, 104 Northeastern 983, 1141.

Ohio Natural Gas Co. v. Ullery, 68 Ohio St. 259, 67 Northeastern 494.

Wettengel v. Gormley, 160 Pa. 559, 28 Atlantic 934, 40 American State 733.

Campbell v. Lynch, 81 W. Va. 374, 94 Southeastern 739.

INDIAN LANDS.

APPOINTMENT OF GUARDIAN—RIGHTS OF LESSEE.

An Indian woman executed and delivered to a named lessee an oil and gas lease upon lands owned by her. Subsequently the lessor was adjudged incompetent and a guardian appointed for her person and estate. The order declaring the lessor incompetent did not purport to adjudicate any right claimed by the lessee nor did it effect his interest; but the sole question in the proceedings was as to the competency of the lessor. Under such circumstances the lessee in the oil and gas lease had no right to appeal from the order appointing the guardian.

Fixico, *In re*, — Okla. —, 175 Pacific 516.

OIL AND GAS LEASE AS CONVEYANCE—VALIDITY—APPROVAL BY COURT.

An oil and gas-mining lease executed February 11, 1915, by a full blooded heir of a deceased Creek Indian allottee is a conveyance of an interest in the land and is void unless approved by the court having jurisdiction, as required by section 9 of the act of Congress of May 27, 1908, (35 stat., 315).

Hoyt v. Fixico, — Okla. —, 175 Pacific 517.

LEASE BY GUARDIAN—PERIOD OF DURATION.

An oil and gas mining lease of lands owned by a full-blooded heir of a deceased Creek Indian allottee executed by a guardian of a minor full-blooded heir of the deceased allottee on March 2, 1912, for a period of years extending beyond the minority of the ward is valid where the lease was approved by the county court having jurisdiction of the settlement of the estate of the deceased allottee.

Hoyt v. Fixico, — Okla. —, 175 Pacific 517, p. 518.

LEASE OF RESTRICTED LANDS—CONTROL OF PROPERTY—TRUST—TAXATION.

The Act of Congress of May 27, 1908 (35 stat., 312), provides for the leasing of the restricted lands of Indian allottees for oil and gas purposes with the approval and under rules and regulations approved by the Secretary of the Interior. These rules provide for the payment of the royalty to the Secretary for the use and benefit of the allottee, but there is nothing in the statute which contemplates control of the property for which the fund is expended. There is nothing in the statute indicating any intention of Congress to empower the Secretary of the Interior to impose restrictions or to hold in trust, lands purchased for an allottee with oil royalties accruing from his allotment. The fact that the royalties while in the hands of the Secretary are held as a trust fund and therefore not taxable is not sufficient to impress the land with any such trust so as to relieve it from taxation by the State.

Hones v. Whitlow, — Okla. —, 175 Pacific 753.

MINING PROPERTIES.

TAXATION.

VALUATION OF TAXABLE PROPERTY—NOTICE—DUE PROCESS OF LAW.

On a hearing as to the increase in valuation of certain mining property the matter was referred to one member of the board of equalization for a report. The member after the hearing reported a certain valuation to the full board, but the board rejected such valuation and fixed a higher valuation on the property without notice to the owner of such rejection. After the increased valuation was placed upon the property notice was given the owner of the increase and in such case the statute gave the owner the right to have the valuation corrected on appeal, but this he failed to do. Neither the statute nor the action of the board of equalization denied the property owner the due process which the constitution guarantees.

Empire Min. Co. v. Bowers, — Ala. —, 79 Southern 561, p. 563.

PRESUMPTION AS TO VALUE.

A deed for land reserved to the grantor all coal and iron and minerals on or under the land including the oils of all kinds and the right to enter upon the land for the purpose of mining such minerals. Where such a reservation is made it will be presumed that the minerals mentioned and the right to mine the same are of some actual value for the purpose of assessment and taxation.

Colby, In re, — Iowa —, 169 Northwestern 443, p. 444.

MINERALS—OWNERSHIP—ASSESSMENT FOR TAXES.

When the fee in minerals has been separated from the fee in the surface, the fee or interest in the minerals is assessable and taxable to the owner thereof as real estate under the statute of Iowa.

Colby, In re, — Iowa —, 169 Northwestern 443, p. 444.

RESERVATION OF COAL—SPECULATIVE VALUES.

The owner of 160 acres of land sold and conveyed the same but reserved therefrom all coal and other minerals beneath the surface. In the matter of the assessment of the coal for taxation such proceedings were had that the coal rights were assessed for taxes at \$2,000. No mine had been opened, and no coal of that reserved

had been worked or mined. The evidence of experts and persons familiar with the conditions and the coal deposits in the community left no doubt but that there might be coal under the land, but no one had any reasonable ground for so saying. The witnesses for the taxing officers based their conclusions on the inference that because coal was found in adjoining land it must exist beneath the surface of the land in question. The experts who professed to be familiar with the character of the coal deposits throughout the community were of the opinion that such an inference was unwarranted. Under such circumstances and proof the existence of coal under the particular land was purely a matter of conjecture and the assessment in such case should not exceed the nominal sum of \$1 per acre.

Colby, In re, — Iowa —, 169 Northwestern 443, p. 444.

INCOME FROM OIL PRODUCTION.

The Oklahoma statute of 1915 (Ch. 164, sec. 1) makes every person in the State liable for an annual tax on the entire net income arising and accruing from all sources. It also provides that a like tax shall be levied and paid upon the entire net income from all property owned, and of every business, trade, or profession carried on in the State by persons residing elsewhere. This statute is not invalid as to the income of a nonresident arising solely from the production of oil wells and appliances within the State of Oklahoma and managed by the owner residing in another State.

Shaffer v. Howard, 250 Federal 873, p. 875.

TANK CARS OF FOREIGN CORPORATION.

Property can be assessed under the statute of Louisiana only in the taxing district within which it is situated, and the State board of appraisers could not assess in one parish tank cars of a tank line company distributed over the railroads throughout the State under a lease between the tank line company and the railroads, the cars of which are operated entirely by the lessees. If the tank cars were subject to assessment, the assessment must be made for each parish wherein cars happen to be situated or in each parish for its proportional part of the average whole within the State.

Union Tank Line Co. v. Day, 143 La. —, 79 Southern 334, p. 335.

INDIAN LANDS—PURCHASE FROM PRIVATE OWNER.

Indian lands, theretofore taxable, purchased from their private owners, with oil royalties accruing to a full-blooded Creek Indian from her restricted allotment, are not exempt from State taxation

by a clause in the deed making the lands inalienable without the consent of the Secretary of the Interior.

Jones v. Whitlow, — Okla. —, 175 Pacific 753.

INCREASE OF VALUATION—ORDER OF ONE MEMBER OF COUNTY BOARD—RECOVERY OF TAXES.

An order increasing the valuation of mining property made on a hearing before one member of the county board of equalization was not absolutely void, nor even void or erroneous in any sense that would authorize the owner of the mining property to recover back the amount of taxes paid in accordance with an assessment made under such order. The board of equalization may designate one of its members to hear a particular complaint or to hear or to receive certain evidence, but if the board had no such power and the taxpayer consented thereto he could not be heard to complain, although the State might not be bound thereby.

Empire Min. Co. v. Bowers, — Ala. —, 79 Southern 561, p. 563.

MEETINGS OF BOARD OF EQUALIZATION—VALIDITY OF VALUATION.

An order of a county board of equalization fixing the valuation of mining property was not void because done at a time not fixed by statute for a meeting of the board. The statute authorizing the valuation prescribed and specified times for the meetings of the board but provided for regular and called sessions. The statute also expressly provided that if the acts and judgments should be done or rendered at times not authorized they should not be void on that account.

Empire Min. Co. v. Bowers, — Ala. —, 79 Southern 561, p. 563.

TRESPASS.

ENTRY ON INCLOSURE OF ANOTHER.

An entry upon the inclosure of another is a trespass where it is made surreptitiously as well as where it is made by force. The rule applies to a trespass upon the inclosed lands of another for the wrongful purpose of exploring for oil and for mining and removing any oil that might be found.

Collier v. Bartlett, — Okla. —, 175 Pacific 247, p. 250.

QUARRY OPERATIONS.

DUTY TO FURNISH SAFE PLACE—KEEPING PLACE SAFE.

The obligation of an employer to provide reasonably safe places for his employees to work does not obligate him to keep the places where the employees work in a safe condition at every moment of the work so far as its safety depends upon the due performance of that work by them and their fellow servants.

Falla v. Pine Mt. Granite Co., — Ga. —, 97 Southeastern 114, p. 115.

HAZARDOUS BUSINESS—CARE REQUIRED—SAFE TOOLS.

A quarry operator is engaged in hazardous business, and it is his duty to exercise care commensurate to the danger to be reasonably anticipated and to furnish such tools as will, so far as is reasonably practical, protect his employees from danger.

De Nardo v. Stephens-Jackson Co., — Pa. —, 104 Atlantic 584, p. 585.

DANGERS FROM BLASTING—DUTY TO WARN.

The dangers from blasting in quarry operations is one frequently recurring and its occurrence can be foreseen by the person charged with the duty of watching it, and if the danger is not foreseen and proper warning given the quarry becomes an unsafe place for the workmen; but it may be made reasonably safe if proper warning is given. It clearly follows that on the person whose duty it was to take care that the place should be kept safe was cast the duty of giving timely warning and it is a part of the operator's duty to his employees that proper care should be exercised in giving warning of an expected blast.

United Verde Copper Co. v. Kuchn, 253 Federal 425, p. 427.

Belleville Stone Co. v. Mooney, 60 N. J. Law 328, 38 Atl. 835.

Hjelm v. Western Granite Contracting Co., 94 Minn. 169, 102 Northwestern 384.

Jacobson v. Hobart Iron Co., 103 Minn. 319, 114 Northwestern 951.

FIRING BLASTS—WARNING—FAILURE TO HEED.

In the operation of a quarry it was the custom of the operator to fire blasts about 10 minutes after the end of the work for the day, a warning being given by blowing a whistle five times when it was expected that employees within the danger zone would seek shelter. The failure of an employee to obey the whistle while a careless and

perhaps negligent omission of duty was not such serious and wilful conduct as would amount to a defense under the Connecticut Workmen's Compensation Act, and especially where the employee stopped at a commissary maintained by the employer within the danger zone and kept open at quitting time and where the employer in fact invited the employees to stop on their way home.

Merlino v. Connecticut Quarries Co., — Conn. —, 104 Atlantic 396, p. 397.

BLASTING—IRREPARABLE INJURY—INJUNCTION.

Where the facts averred show that irreparable injury is being sustained by blasting operations and the continuous throwing of rock and other débris on the complainant's land and that such trespass is a continuous one for which the law furnishes no adequate relief, an injunction will be made perpetual.

Woodstock Operating Corp. v. Quinn, — Ala. —, 79 Southern 253, p. 254.

BLASTING—INJURY TO LAND—DISPUTED TITLE—INJUNCTION.

In an action to enjoin quarry operations on the ground of the continuous throwing of rock and other débris on the complainant's land, injunction can not be granted if the title to the land in question is in dispute and where the complainant has not taken steps to establish his title.

Woodstock Operating Corp. v. Quinn, — Ala. —, 79 Southern 253, p. 254.

FOREMAN'S DIRECTION TO CONTINUE WORK—PROMISE TO REPAIR.

A boy 16 years old was engaged to drive cars loaded with rock from the quarry to the crusher. At a certain point at the top of the grade he unhooked the singletree from the car, turned the horse to the side and permitted the car to run by gravity to its destination. The hook that held the singletree had become mashed, bent and battered and made it difficult to remove the singletree while the car was in motion. Prior to his injury the boy had called the foreman's attention to the condition of the hook and the foreman had directed him to go ahead and use it for a day or two and they would have a new one made. The boy believed he could rely on these statements and was legally justified in doing so, and did not assume the risk occasioned by the defective condition of the hook and by reason of which he was subsequently injured by the car running upon him while he was attempting to remove the singletree from the defective hook.

Gingerly v. Phelps Stone & Supply Co., — Mo. App. —, 206 Southwestern 400, p. 401.

USE OF IRON TAMPING BAR.

A quarry operator knowingly permitted the tamping of explosives to be done with iron bars and failed to supply any wooden rods or other implements for that purpose. Under such circumstances the quarry operator was liable for injuries caused by an explosion while the hole man was using a tamping bar in filling a drilled hole with explosives, where the evidence was sufficient to justify the inference that the explosion was caused by the use of the iron tamping bar.

De Nardo v. Stephens-Jackson Co., — Pa. —, 104 Atlantic 584, p.

ASSUMPTION OF RISK—SAFE PLACE.

An employee in a quarry assumes the ordinary risks of his employment and is bound to exercise skill and diligence to protect himself.

Falla v. Pine Mt. Granite Co., — Ga. —, 97 Southeastern 114, p. 115.

RISKS NOT ASSUMED BY EMPLOYEES.

An illiterate foreign laborer who had never been employed in any other mine or quarry than that of the particular operator and who had no knowledge of blasting except as done by the quarry operator and who had never been warned of the danger of tamping explosives with an iron bar and who might assume that the employer had taken proper precautions for his safety, can not as a matter of law be charged with the assumption of the risk of danger from the use of an iron tamping bar.

De Nardo v. Stephens-Jackson Co., — Pa. —, 104 Atlantic 584, p. 585.

FELLOW SERVANTS—WHO ARE.

Where two or more employees are engaged in the same service in quarry operations and are engaged in labor for the furtherance of the general purpose of the business in which they contract to serve and are subject to the general control and direction of a single employer, they are fellow servants, though they may be employed in different departments or duties and so far removed from each other as that one can in no degree control or influence the conduct of the other.

Falla v. Pine Mt. Granite Co., — Ga. —, 97 Southeastern 114.

FELLOW SERVANTS—STONE CUTTER AND ENGINEER.

A person employed by a stone company in the cutting or breaking of stone is a fellow servant with the engineer and fireman of a locomotive operated by the same company in connection with the stone

industry and with the employees engaged in making blasts in the quarrying of stone. The quarry operator is not liable for injuries occasioned to one servant by the negligence of a fellow servant.

Falla v. Pine Mt. Granite Co., — Ga. —, 97 Southeastern 114.

NEGLIGENCE—PROOF OF INJURY—PHYSICAL FACTS.

The duty of a boy 16 years old was to drive a horse hauling cars of stone out of a quarry. When the car reached the top of the grade it was his duty to detach the horse and the car would then run by gravity to its destination. While attempting to detach the car from the horse by leaning over with his head and shoulders in front of a moving car, the work was unnecessarily prolonged by reason of the defective, bent and battered condition of the hook that held the singletree and that by reason of such delay the car rushed forward, striking him on the side of the face and inflicting the injuries complained of. The fact that the plaintiff testified that the car struck him on the right side of his face is immaterial, though an impossible physical fact under the circumstances of the case, but it could not defeat the action where the evidence showed that the lower jaw bone was broken, many of his teeth knocked out, his face cut and bruised and he sustained a severe shock and injury to his head, and especially where the complaint did not state that the car in fact struck him on the right side of the face, though he so testified.

Gingerly v. Phelps Stone & Supply Co., — Mo. App. —, 206 Southwestern 400, p. 401.

DAMAGES FOR INJURIES TO MINERS.

ELEMENTS OF DAMAGES.

MEASURE OF DAMAGES—INSTRUCTIONS.

In an action by a boy 16 years of age for damages for injuries sustained while working in a mine, an instruction by the court is not reversible error because it authorized the jury to consider "how far, if at all, the injuries now or will inconvenience" the complainant, where the court in the same instruction charged the jury as to "the extent of the diminishing and impairing of his earning powers after attaining his majority, if any."

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 North-eastern 664, p. 669.

ACTION BY MINOR—RECOVERY FOR LOSS OF WAGES.

In an action by a boy 16 years old for damages for injuries received while working in a mine the court properly instructed the jury that the plaintiff could not recover for any loss of wages or inability to labor during the period previous to his arriving at 21 years of age.

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 North-eastern 664, p. 669.

EXPENSES OF MEDICAL TREATMENT.

In estimating the amount of damages to an injured miner the jury may take into consideration various elements including his necessary expense for medical attention and treatment.

Honey v. St. Regis Min. & Smelting Co., — Mo. —, 205 Southwestern 93, p. 95.

EXPENSES OF TREATMENT—INSTRUCTION.

In an action by a boy 16 years old for damages for injuries sustained while working in a mine the court properly instructed the jury that the plaintiff was not entitled to recover for the expenses of a physician, nurse hire, or any expenses in treating his alleged injury.

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 North-eastern 664, p. 669.

PROOF OF INJURIES—EXPERT EVIDENCE—OPINION OF WITNESS.

Where the injuries complained of are of such a character as to require skillful and professional men to determine the cause and extent of the injury, the question is exclusively within the domain of science and must be determined by men skillful in the science of medicine; but this rule does not apply where the evidence relates to the effect of the injury complained of and the physical ability of the injured person to perform labor. In such case a nonexpert witness after stating the facts upon which the opinion is based may give an opinion as to the effect of the injury and the ability of the injured person to perform labor.

Creek Coal Min. Co. v. Paprotta, — Okla. —, 175 Pacific 235, p. 236.

ABILITY TO PERFORM LABOR—OPINION OF WITNESS.

The ability of an injured person to perform manual labor is not a matter so exclusively within the domain of medical science that witnesses who were acquainted with the injured person and had opportunity to observe his ability can not testify in reference thereto.

Creek Coal Min. Co. v. Paprotta, — Okla. —, 175 Pacific 235, p. 236.

WAGES PAID AFTER INJURY—CREDIT.

After an accident to a coal miner the coal mine operator continued to pay him wages amounting to a large sum before the miner commenced his action for damages. On the trial of the case the court instructed the jury that if it found in favor of the plaintiff for a sum in excess of the amount of the payments made then credit should be given on the verdict for the sum so paid.

James v. Winnifred Coal Co., — Iowa —, 169 Northwestern 120, p. 125.

OCCUPATIONAL DISEASE.

An "occupational disease" suffered by a miner as distinguished from a disease caused or superinduced by natural wrong or injury is a disease which is a usual incident or result of the particular employment in which the miner was engaged as distinguished from a disease which is caused or brought about by the employer's failure in his duty to furnish him a safe place to work. A wrongful injury which operates to destroy or undermine or impair the health of a miner is no less actionable than is a wrong from which the miner sustains wounds or bruises or broken bones.

Gay v. Hocking Coal Co., — Iowa —, 169 Northwestern 360, p. 362.

RELEASE OF DAMAGES—SUBSEQUENT COMPLICATIONS.

A release of damages by an injured miner on payment of a comparatively small sum can not be extended to cover the loss of a leg and other severe injuries not connected with the particular injury contemplated by both parties at the time the release was executed and for injuries that developed after the release was executed. It can not be assumed that a healthy man in the prime of life, dependent upon a calling which requires unusual physical strength, intended to accept \$200 as full compensation for the permanently helpless condition which subsequently arose.

Gold Hunter Min. & Smelting Co. v. Bowden, 252 Federal 388, p. 391.

SETTLEMENT AND RELEASE—FRAUD IN OBTAINING.

Where a miner had been injured and while in a hospital confined in his bed suffering from the injury and under the effects of chloroform, the assistant superintendent of the mine operator visited him for the purpose of obtaining a release of damages for the injuries. The assistant superintendent looked after insurance for the miners and had adjusted insurance for the injured miner before and informed the injured miner that he had come to see about his insurance. The injured miner believed that the business related solely to the insurance and when he signed the instrument, the pretended release, he thought he was signing an instrument to get his insurance. The evident purpose of the assistant superintendent was to obtain an advantage to which the mine operator was not entitled, and a release of damages under such circumstances is fraudulent and can not operate to defeat an action by the injured miner for damages.

Dovich v. Chief Consolidated Min. Co., — Utah —, 174 Pacific 627, p. 631.

SETTLEMENT OF DAMAGES—FRAUD IN OBTAINING RELEASE.

Settlements of damage cases between employers and employees are to be encouraged, but disingenuousness and unfairness on the part of either are reprehensible. Settlements procured by fraud and by false representations as to the objects of the settlement would not be binding upon an injured employee.

Dovich v. Chief Consolidated Min. Co., — Utah —, 174 Pacific 627, p. 631.

RELEASE OBTAINED BY FRAUD—PROOF—INSTRUCTION.

In an action by a miner for damages for injuries a release of all damages was pleaded as a defense. The plaintiff alleged that the release was procured by fraud. The court instructed the jury to the effect that before they could disregard the release on the ground of fraud it must appear by evidence that is clear, cogent, and convincing that fraud was practiced upon the plaintiff and he was thereby led into the execution of the instrument. On appeal the court says

of this instruction: "The words 'clear, cogent, and convincing' denote something more than a mere preponderance. If such words were used in an ordinary civil case and excepted to by the losing party, we believe the exception would be well taken for the reason that they do imply something more than a mere preponderance, and a preponderance is all that is ordinarily required. We are not conceding that more than a preponderance was required in the present case. For the reasons above stated this assignment should not prevail."

Dovich v. Chief Consolidated Min. Co., — Utah —, 174 Pacific 627, p. 631.

DAMAGES NOT EXCESSIVE.

INSTANCES.

An award of \$1,000 will not warrant the reversal of a judgment as excessive in an action by a boy 16 years of age injured in a mine where it was shown that his leg was broken, his spinal column wrenched and strained, and that in healing the bones of his leg were so united that his leg was bent or bulged forward.

Jackson Hill Coal & Coke Co. v. Van Hentenryck, — Ind. App. —, 120 Northwestern 664, p. 669.

A boy 16 years old driving a rock car in a stone quarry was injured by having some of his teeth knocked out, his lower jaw broken so that it had to be wired up in such a way that he could only get sustenance for many weeks by drawing it through his teeth; his face was cut, bruised, and contused, and he sustained a severe shock and injury to his head and suffered severely in other parts of his body. There was a nervous jerking of the leg and arm and a lack of perfect approximation of the teeth which could never be rectified. A verdict of \$4,500 for these injuries was not excessive.

Gingerly v. Phelps Stone & Supply Co., — Mo. App. —, 206 Southwestern 400, p. 402.

A verdict for \$25,000 was approved where the evidence showed that a miner was struck with a quantity of rocks and stones from a blast that resulted in the loss of both eyes, the total loss of the hearing in one ear, an impairment of the other, some destruction of the molar bones of the jaw, and a wound in one shoulder.

United Verde Copper Co. v. Kuchn, 253 Federal 425, p. 427.

DAMAGES EXCESSIVE.

INSTANCES.

An assessment of \$15,000 damages for the loss of one leg, amputated some 6 inches above the ankle, and also the loss of the little finger on the right hand, was held to be excessive. A remitter of \$5,000 was ordered on condition that the judgment be affirmed for \$10,000.

Johnson v. Waverly Brick & Coal Co., — Mo. —, 205 Southwestern 615, p. 618.

INTERSTATE COMMERCE.

WORKMEN'S COMPENSATION ACT—APPLICATION TO EMPLOYEES.

The fact that a natural gas company was engaged in interstate commerce in transporting natural gas from West Virginia into Ohio does not prevent the application of the workmen's compensation act of West Virginia to an employee injured while assisting in the location of a derrick at one of the company's wells, where such injured person and those working with him were engaged in work wholly within the State of West Virginia and which work was only incidental to the actual transportation of the gas.

Suttle v. Hope Nat. Gas Co., — W. Va. —, 97 Southeastern 429, p. 433.

COMPENSATION ACT—POWER OF STATE—COMPENSATION.

With respect to the employees of an employer engaged in interstate commerce a State has full and exclusive power to prescribe a method of compensation for all employees whose work is wholly intrastate and clearly separable and distinguishable from work in interstate commerce. A State also has permissive power to prescribe a method of compensation within the field belonging primarily to Congress until the latter has exercised its superior power covering the same subject.

Suttle v. Hope Nat. Gas Co., — W. Va. —, 97 Southeastern 429, p. 431.

NATURAL GAS—TRANSPORTATION BETWEEN STATES.

Natural gas is a commodity as much so as coal and when transported through conduits to market becomes the subject of interstate or intrastate commerce accordingly as the transportation between the place of production and distribution and sale is in different States or in the same State.

Suttle v. Hope Nat. Gas Co., — W. Va. —, 97 Southeastern 429, p. 431.

STORAGE OF EXPLOSIVES—POWER OF CITY.

The statute of the United States (Rev. Stat., secs. 4278, 4279) regulates the transportation of explosives as to foreign and interstate commerce; but the statute does not prohibit a city from designating places in a harbor where explosives in the course of transportation in foreign or interstate commerce shall be deposited or kept.

City of Seattle v. Lloyd's Plate Glass Ins. Co., 253 Federal 321, p. 323.

EXPLOSIVES.

CARE REQUIRED FOR SAFETY.

In the employment of inherently dangerous agencies such as powder or other explosives it is the duty of the employer to exercise a degree of care for the safety of his employees commensurate with the danger reasonably to be anticipated.

De Nardo v. Stephens-Jackson Co., — Pa. —, 104 Atlantic 584, p. 585.

DANGER—UNSAFE PLACE—WARNING.

A mine operator using a highly dangerous explosive in his mine thereby renders the place unsafe, unless proper rules are made for the handling of the explosive and proper warning is given of an intended blast.

United Verde Copper Co. v. Kuchn, 253 Federal 425, p. 426.

See Hendrickson v. United States Gypsum Co., 133 Iowa 89, 110 Northwestern 322.

MINE OPERATOR'S DUTY TO WARN—DELEGATION OF DUTY.

In the use of explosives in a jurisdiction where the fellow servant rule has been abolished by statute, the law imposes upon an employer or a mine operator, under the safe place rule, a responsibility he can not delegate to others and determines his liability for the negligence of a fellow servant.

United Verde Copper Co. v. Kuchn, 253 Federal 425, p. 427.

NEGLIGENCE—LIABILITY.

The owner of a foundry kept a tank of naphtha in the street of a city. The fact that the naphtha was kept in the street and had no sign painted thereon, as required by the city ordinance, will not of itself prevent a recovery by the plaintiff against a railroad company for negligently backing a car against the naphtha tank, causing an explosion and the destruction of the owner's property and the injury complained of.

Kupferle Foundry Co. v. St. Louis Merchant Bridge, etc., R. Co., — Mo. —. 205 Southwestern 57, p. 58.

ACCESSIBILITY TO CHILDREN—NEGLIGENCE.

A mining company stored its explosives and dynamite caps in an open box kept at the side of a building and in plain view from a path over which the public, including children, passed, without

notice or warning of any kind and with knowledge that large numbers of children and adults passed over the path and near the box of dynamite caps. Under such circumstances the mining company was held liable for injuries to a child 8 years old caused by the explosion of a dynamite cap taken from the box.

Anderson v. Newport Min. Co., — Mich. —, 168 Northwestern 523, p. 524.

EXPPOSED DYNAMITE CAPS—INJURY TO BOY.

A city while digging a sewer made excavations by the use of explosives, using dynamite and dynamite caps for this purpose. At the end of a day's work the foreman placed an unlocked box of dynamite caps on adjoining premises. A boy 9 years old, son of the owner of the premises, was attracted by the box of caps, took two of the caps, and in attempting to solder them together caused them to explode, lacerating one hand so that amputation was necessary, and receiving injuries to his eye, face, and other parts of his body. The father, as the owner of the premises, did not know that the employees of the city had placed the box of caps on his premises. Under these circumstances the act of the foreman in leaving the box of dynamite caps on the premises accessible to the boy was the proximate cause of the injury, for which the city was liable in damages.

City of Lubbock v. Bagwell, — Tex. Civ. App. —, 206 Southwestern 371, p. 372.

POWER OF CITY TO REGULATE.

A city has no power or authority absolutely to prohibit the use of such products in the city; but a city possesses power merely to regulate the use, sale, and disposition of explosives. A city ordinance attempting to regulate the storage of explosives will not be enforced and will be held invalid as unreasonable where its enforcement would absolutely prohibit the use or storage of any such explosives as gasolines, benzines and naphthas.

Standard Oil Co. v. City of Birmingham, — Ala. —, 79 Southern 489, p. 492.

VALIDITY OF CITY ORDINANCE REQUIRING INSPECTION.

A city ordinance provided that gasolines, benzines, and naphthas kept for sale should be tested by inspectors and that they "shall have a specific gravity at 60 degrees Fahrenheit of not less than 58 nor more than 84." The ordinance as enacted and published is void for uncertainty because unreasonable and incapable of performance, as it requires the oils or the products mentioned to be more than twice as heavy as the heaviest substance known to science; and under such an ordinance a city can not collect and enforce its fees for inspection.

Standard Oil Co. v. City of Birmingham, — Ala. —, 79 Southern 489, p. 490.

TRANSPORTATION—REGULATION BY CITY.

The United States Revised Statutes, sections 4278 and 4279, regulating the transportation of nitroglycerin and other explosives in respect to foreign or interstate commerce, expressly declares that these sections shall not be construed to prevent any State or city from regulating or from prohibiting the traffic or transportation of nitroglycerin or the explosives named. These sections do not deprive a city of the right to designate places in a harbor where such explosives may be stored or kept if it is not a burden to either foreign or interstate commerce.

City of Seattle v. Lloyd's Plate Glass Ins. Co., 253 Federal 321, p. 323.

NAPHTHA TANK IN STREET—LIABILITY FOR EXPLOSION.

The operator of a foundry kept a naphtha tank in a street within a few feet of his property. A railroad company having a spur track in the street negligently ran a car off the end of the track and against the naphtha tank, causing an explosion and the destruction of the owner's property. The fact that the railway employees did not know that the tank contained naphtha, an explosive, will not protect the railroad company from liability for damages caused by the explosion resulting from its negligence.

Kupferle Foundry Co. v. St. Louis Merchant Bridge, etc., R. Co., — Mo. —, 205 Southwestern 57, p. 58.

PUBLICATIONS RELATING TO MINING LAWS.

A limited supply of the following publications of the Bureau of Mines has been printed and is available for free distribution until the edition is exhausted. Requests for all publications can not be granted, and to insure equitable distribution applicants are requested to limit their selection to publications that may be of especial interest to them. Requests for publications should be addressed to the Director, Bureau of Mines.

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PUBLICATIONS AVAILABLE FOR FREE DISTRIBUTION.

BULLETIN 75. Rules and regulations for metal miners, by W. R. Ingalls and others. 1915. 296 pp., 1 fig.

BULLETIN 90. Abstracts of current decisions on mines and mining, December, 1913, to September, 1914, by J. W. Thompson. 1916. 176 pp.

BULLETIN 101. Abstracts of current decisions on mines and mining, October, 1914, to April, 1915, by J. W. Thompson. 1915. 138 pp.

BULLETIN 118. Abstracts of current decisions on mines and mining, reported from October to December, 1915, by J. W. Thompson. 1916. 74 pp.

BULLETIN 126. Abstracts of current decisions on mines and mining, reported from January to April, 1916, by J. W. Thompson. 1916. 90 pp.

BULLETIN 164. Abstracts of current decisions on mines, reported from September to December, 1917, by J. W. Thompson. 1918. 147 pp.

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TECHNICAL PAPER 53. Proposed regulations for the drilling of oil and gas wells, with comments thereon, by O. P. Hood and A. G. Heggem. 1913. 28 pp., 2 figs. 5 cents.

